



Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Tuesday, April 11, 2006
8:00 a.m. – 9:15 a.m.
212 Knott

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Transportation & Economic Development Appropriations Committee

Start Date and Time: Tuesday, April 11, 2006 10:00 am

End Date and Time: Tuesday, April 11, 2006 12:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 97 Safety Belt Law Enforcement by Slosberg
HB 683 CS Growth Management by Traviesa
HB 1049 CS Driver's Licenses by Traviesa
HB 1465 CS Speed Limit Enforcement on State Roads by Altman
HB 1589 CS Specialty License Plates by Smith
HB 7031 Department of State by Tourism Committee
HB 7081 Administrative Procedures by Governmental Operations Committee
HJR 7093 State Bonds for Transportation Funding by Transportation Committee
HB 7095 Transportation Financing by Transportation Committee
HB 7107 Trademarks by Economic Development, Trade & Banking Committee
HB 7253 Growth Management by Growth Management Committee

NOTICE FINALIZED on 04/07/2006 16:14 by SLB



Florida House of Representatives

Fiscal Council

Allan Bense
Speaker

Joe Negron
Chair

AGENDA

Tuesday, April 11, 2006

8:00 a.m. – 9:15 a.m.

212 Knott Building

I. Meeting Call to Order

II. Opening Remarks by Chair

III. Consideration of the following bill(s):

HB 103 CS Property Appraiser Assessments by McInvale
HB 227 CS Personal Needs Allowance by Bilirakis
HB 293 Fiscally Constrained Counties by Pickens, Brown
HB 493 CS Ethics for Public Officers and Employees by Ryan
HB 743 CS Agricultural Usage Sales and Use Tax Exemptions by Bowen
HB 971 Broward County by Sobel
HB 995 Agency Inspectors General by Bean
HB 1165 CS Florida Retirement System by Barreiro
HB 1283 CS Innovation Incentives by Attkisson
HB 1299 CS Areas of Critical State Concern by Sorensen
HB 7179 Corporate Income Tax by Finance & Tax Committee
HB 7183 Property Tax Exemptions by Finance & Tax Committee

IV. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103 CS

Property Appraiser Assessments

SPONSOR(S): McInvale

TIED BILLS:

IDEN./SIM. BILLS: SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	6 Y, 2 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council	7 Y, 0 N	DiVagno	Hamby
3) Fiscal Council		Monroe <i>KDSM</i>	Kelly <i>ck</i>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 193.023, F.S., requires that real property must be physically inspected every three years for purposes of assessing the value of the property. This bill would require the property appraiser to physically inspect the property every 5 years. In addition, the property appraiser "may review image technology" as he or she deems necessary.

This bill would take effect upon becoming law.

The bill has no fiscal impact on the state, and an indeterminate fiscal impact on local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Section 193.023, F.S., requires that real property must be physically inspected every three years for purposes of assessing the value of the property. This bill would require the property appraiser to physically inspect the property every five years. In addition, the property appraiser "may review image technology" as he or she deems necessary.

As noted in the background information, the change from physically inspecting property every three years to every five years would fall within the commonly accepted professional standards. In addition, while this statutory change would require that property be inspected every five years, property appraisers would be free to inspect property more often if they deemed it necessary or upon the request of the taxpayer or owner.

Background:

Section 4, Article VII, of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain exceptions. Florida property appraisers have the statutory responsibility to list and determine the just value of all real property in each county each year for purposes of ad valorem taxation. Section 193.085(1), F.S.

Section 193.023, F.S., provides that property appraisers must complete an assessment of the value of all property no later than July 1 of each year, except that the Department of Revenue may for good cause extend the time for completion of assessment of all property. This section provides that in making the assessment of the value of real property, the property appraiser must physically inspect each property every three years to ensure that the tax roll meets all the requirements of law. In addition, the property appraiser must physically inspect any parcel of taxable real property upon the request of the taxpayer or owner. In valuing property in accordance with constitutional and statutory requirements, the property appraiser may adjust the assessed value placed on any parcel or group of parcels based on mass data collected, on ratio studies prepared by an agency authorized by law, or pursuant to regulations of the Department of Revenue.

Section 195.022, F.S., requires the Department of Revenue to provide aerial photographs at a minimum of every three years to the state's 67 property appraisers. Many property appraisers rely on the use of aerial photography for discovery, location, and identification of property characteristics. A schedule of counties to be flown each year (approximately one third of the state) has been developed to ensure that this requirement is met. This is accomplished through an interlocal agreement with the Department of Transportation to provide photo enlargements to the counties. However, due to workload and resource allocation, the Department of Transportation is often unable to fly all counties that have been scheduled. As a result, the Department of Revenue contracts with private aerial photography firms to fly the remaining counties.

The International Association of Assessing Officers publishes advisory standards to assist assessing officers in the improvement and standardization of their offices. The 2002 Standard on Mass Appraisal of Real Property recommends that property be physically reviewed and individually reappraised every four to six years.

C. SECTION DIRECTORY:

Section 1 of the bill amends s. 193.023, F.S., to require that property appraisers physically inspect property every five years instead of every three years. In addition, property appraisers may review, as they deem necessary, "image technology."

Section 2 provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. To the extent that changes in physical inspection requirements result in changes in the tax roll they may either increase or decrease local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some property appraisers have expressed concerns that with a requirement that property be inspected every five years they will not be given enough resources to inspect property on a more regular basis.

The bill states that the property appraiser may review "image technology". Image technology is not defined in the bill or the statutes and no common definition of the term exists. As such, it is uncertain exactly what the bill is referring to. In addition, by specifying that "image technology" is different from a physical inspection, the language may prevent property appraisers from using emerging technology to perform physical inspections in the future.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On November 10, 2005, the Committee on Finance and Tax adopted one amendment to this bill. The amendment removed language which would have "required" the property appraiser to review certain images "as he or she deems necessary." The use of the word "required" appeared to make this review mandatory, while the discretion granted to the property appraiser by the later phrase made this review voluntary. The language was changed so that it could not be read as creating a new duty on the part of the property appraiser. In addition, while the original bill stated that the property appraiser may review satellite imaging, aerial photos, and other "similar imagery", the committee substitute provides that they may review "image technology".

HB 103

2006
CS

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to property appraiser assessments;
amending s. 193.023, F.S.; revising property appraisers'
authority for inspecting real property for assessment
purposes in addition to physical inspections; reducing the
required frequency of physical inspections; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 193.023, Florida
Statutes, is amended to read:

193.023 Duties of the property appraiser in making
assessments.--

(2) In making his or her assessment of the value of real
property, the property appraiser is required to ~~inspect~~
physically inspect the property every 5 3 years, and may review
image technology, as the property appraiser deems necessary, to
ensure that the tax roll meets all the requirements of law.

HB 103

2006

CS

24 | However, the property appraiser shall physically inspect any
25 | parcel of taxable real property upon the request of the taxpayer
26 | or owner.

27 | Section 2. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 103 **CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Fiscal Council

Representative(s) McInvale offered the following:

Amendment

Remove line(s) 21 and insert:
physically inspect the property at least once every 5 3 years,
and may review

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 227 CS

Optional Medicaid Payments

SPONSOR(S): Bilirakis

TIED BILLS:

IDEN./SIM. BILLS: SB 930

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care Appropriations Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Speir</u>	<u>Massengale</u>
2) <u>Elder & Long-Term Care Committee</u>	<u>8 Y, 0 N</u>	<u>Walsh</u>	<u>Walsh</u>
3) <u>Fiscal Council</u>	<u></u>	<u>Speir</u> <i>WFS</i>	<u>Kelly</u> <i>ck</i>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Federal law requires a personal needs allowance to be deducted from a recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting (nursing homes, state mental hospitals and intermediate care facilities for the developmentally disabled). The federal law establishes a minimum monthly personal needs allowance of \$30, but states may have a higher personal needs allowance.

Florida's current personal needs allowance is \$35. House Bill 227 increases the monthly personal needs allowance granted to Medicaid recipients in institutional settings from \$35 to \$45.

The total fiscal impact of this bill is \$6 million. The bill will increase Medicaid spending by \$5.4 million (\$2.2 million in general revenue funds). The bill will increase the personal care allowance for Supplemental Security Income (SSI) recipients by \$660,000 in general revenue funds.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government — The bill increases the government's financial contribution to a Medicaid recipient's institutional services.

B. EFFECT OF PROPOSED CHANGES:

Federal law requires a personal needs allowance to be deducted from a recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting (nursing homes, state mental hospitals and intermediate care facilities for the developmentally disabled). The federal law establishes a minimum monthly personal needs allowance of \$30. States can have higher personal needs allowances.

Florida's current personal needs allowance is \$35 pursuant to Florida Administrative Code 65A - 1.7141. Paragraph (a) of subsection (3) of section 409.904, Florida Statutes, states that the monthly personal allowance shall be based on appropriations. The personal needs allowance has been \$35 since 1988.

This bill amends the statute to require a monthly personal needs allowance deduction of \$45. This will allow institutionalized Medicaid recipients to keep \$10 more of their income for personal needs. As a result the Medicaid program will have to pay \$10 more per recipient each month. It estimated that this will cost the state \$2.2 million. The bill provides an appropriation to the Agency for Health Care Administration (AHCA) for the additional Medicaid expenditures that will be incurred as a result of this bill.

It is estimated that the state will also incur additional costs in the personal care allowance category in the Department of Children and Families (DCF) budget as a result of this bill. Currently, about 5,500 institutionalized Medicaid recipients receive Supplemental Security Income (SSI) benefits from the Social Security Administration as their only income. SSI is a monthly cash assistance program for low income disabled or elderly individuals. SSI recipients are automatically Medicaid eligible in the State of Florida. When an SSI recipient is institutionalized, Social Security reduces the monthly SSI payment to \$30. To ensure that institutionalized SSI recipients receive the standard \$35 personal needs allowance, DCF issues a \$5 warrant per month to each institutionalized SSI recipient whose only income is \$30 from SSI. These supplemental payments come from the state's general revenue funds.

The state is not required to provide the funds to ensure nursing home residents receive the standard personal needs allowance. The state is only required to allow the individual a deduction equal to the standard allowance when determining how much the person owes the nursing home facility (or the institution).

The bill also provides an appropriation to DCF to increase the personal needs allowance for SSI recipients so that they receive the same benefit as non-SSI recipients.

C. SECTION DIRECTORY:

Section 1. Amends s. 409.904, F.S., requiring the deduction of \$45 from a Medicaid recipient's income when determining the recipient's responsibility for the cost of care in an institutional setting.

Section 2. Appropriates \$6,012,240 to fund the cost of this bill.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Federal financial participation in the Florida Medicaid Program for State Fiscal Year 2006-2007 is 58.77 percent; for every \$1 the state spends, it earns \$1.43 in federal funds.

2. Expenditures:

<u>Recurring</u>	<u>2006-2007</u>	<u>2007-2008</u>
Medicaid Expenditures		
General Revenue	\$2,205,524	\$2,205,524
Medical Care Trust Fund	<u>\$3,146,716</u>	<u>\$3,146,716</u>
Total	\$5,352,240	\$5,352,240
Personal Care Allowance		
General Revenue	<u>\$660,000</u>	<u>\$660,000</u>
Total	\$660,000	\$660,000
Total Recurring Expenditures	\$6,012,240	\$6,012,240

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow Medicaid recipients in nursing homes, mental health hospitals and intermediate care facilities for the developmentally disabled to keep \$10 more of their income for personal needs.

D. FISCAL COMMENTS:

The amount needed to increase the personal needs allowance is based upon the number of projected Medicaid recipients from the Social Services Estimating Conference on February 3, 2006.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 17, 2006, the Health Care Appropriations Committee adopted an amendment offered by Representative Bilirakis which provided appropriations. As amended, the bill was reported favorably as a committee substitute. This analysis reflects the bill as amended.

HB 227

2006
CS

CHAMBER ACTION

The Health Care Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the personal needs allowance; amending s. 409.904, F.S.; increasing the monthly personal allowance for certain eligible persons; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 409.904, Florida Statutes, is amended to read:

409.904 Optional payments for eligible persons.--The agency may make payments for medical assistance and related services on behalf of the following persons who are determined to be eligible subject to the income, assets, and categorical eligibility tests set forth in federal and state law. Payment on behalf of these Medicaid eligible persons is subject to the availability of moneys and any limitations established by the General Appropriations Act or chapter 216.

HB 227

2006
CS

24 (3) A person who is in need of the services of a licensed
25 nursing facility, a licensed intermediate care facility for the
26 developmentally disabled, or a state mental hospital, whose
27 income does not exceed 300 percent of the SSI income standard,
28 and who meets the assets standards established under federal and
29 state law. In determining the person's responsibility for the
30 cost of care, the following amounts must be deducted from the
31 person's income:

32 (a) The monthly personal allowance for residents which
33 shall be \$45 per month ~~as set based on appropriations.~~

34 Section 2. The sums of \$2,205,524 from the General Revenue
35 Fund and \$3,146,716 from the Medical Care Trust Fund are
36 appropriated to the Agency for Health Care Administration for
37 the 2006-2007 fiscal year for an increase in Medicaid
38 expenditures, and the sum of \$660,000 is appropriated from the
39 General Revenue Fund to the Department of Children and Family
40 Services for the 2006-2007 fiscal year for an increase to the
41 personal care allowance.

42 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 293 Fiscally Constrained Counties
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N	Monroe	Diez-Arguelles
2) Local Government Council	8 Y, 0 N	DiVagno	Hamby
3) Fiscal Council		Monroe	Kelly
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill sets aside 0.0841 percent of available sales tax revenues for distribution to fiscally constrained counties. A "fiscally constrained county" is defined as a county in which a one mill property tax rate will raise no more than \$4 million in revenue annually. Twenty-eight counties currently qualify as a fiscally constrained county. Funds will be distributed by the Department of Revenue using a formula that factors in both the revenue raising potential of one mill, measured on a per capita basis, and a local-effort factor based on the county-wide operating millage levied by each county. Counties may use the distributions for any public purpose other than to pay debt service on any form of indebtedness. Distributions to counties that cease to qualify as a "fiscally constrained county" will be phased-out over a two-year period.

This bill also changes the criteria by which a county currently qualifies for an additional distribution of sales tax revenues under s. 218.65, F.S., by eliminating criteria under which a county with a population over 65,000 could continue to qualify for a distribution. The bill also provides for a two-year phase out of the distribution to a county which grows beyond the population cap.

This bill amends s. 985.2155(2), F.S., to redefine the term "fiscally constrained counties" as a county in which a one mill property tax rate will raise no more than \$4 million in revenue annually. The section provides for state funds to be used to cover the costs of juvenile detention in fiscally constrained counties.

Additionally, the bill appropriates \$2 million from the General Revenue Fund for the 2006-2007 fiscal year to the Office of Tourism, Trade, and Economic Development for the implementation of the rural priority recommendation within the statewide strategic economic development plan.

Finally, this bill reduces general revenue funds by a certain percentage and increases the revenues of fiscally constrained counties by the same amount. The revenue estimating conference has estimated that this bill will have a \$15.9 million impact on the General Revenue Fund.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Distributions to Fiscally Constrained Counties

Current Situation: Section 212.20(6), F.S., currently provides a formula for distributing the proceeds generated by the state tax on sales, use, and other transactions; communications services taxes other than those classified as gross receipts taxes; and, taxes on the retail sales price of any direct-to-home satellite service. After the required distribution to certain trust funds, the remaining tax proceeds are distributed in accordance with specific statutory standards to the General Revenue Fund, the Ecosystem Management and Restoration Trust Fund, the Local-Government Half-cent Sales Tax Clearing Trust Fund, the Revenue Sharing Trust Fund for Counties, and the Revenue Sharing Trust Fund for Municipalities. After these distributions are made, a specific amount of the remaining proceeds is distributed to each county, to qualified facilities for a new professional sports franchise or facilities for a retained spring training franchise, to professional golf halls of fame, and to International Game Fish Association World Center facilities. Any remaining proceeds remain in the General Revenue Fund.

Effect of Proposed Changes: This bill amends s. 212.20(6), F.S., to provide that, after initial distributions are made to the General Revenue Fund, the Ecosystem Management and Restoration Trust Fund, and the Local-Government Half-cent Sales Tax Clearing Trust Fund, 0.082 percent of the available proceeds is transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund to be distributed to "fiscally constrained counties" pursuant to s. 218.67, F.S.

The bill creates s. 218.67, F.S., to provide distributions of funds to fiscally constrained counties. The term "fiscally constrained county" is defined as each county for which the value of one mill will raise no more than \$4 million annually, based on the property valuations and tax data annually published by the Department of Revenue. Twenty-eight counties qualify as a "fiscally constrained county" under this definition: Baker, Bradford, Calhoun, Columbia, De Soto, Dixie, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Sumter, Suwannee, Taylor, Union, Wakulla, and Washington. Based upon 2005 taxable values of property, distributions to fiscally constrained counties range from \$142,554 to \$703,902, with 16 counties receiving over \$500,000.

The amount to be distributed to each fiscally constrained county will be determined by the Department of Revenue at the beginning of the fiscal year, using the prior fiscal year property valuations, tax data, population estimates and the previous year's millage rate. The amount distributed must be allocated based upon the following factors:

- The relative revenue-raising-capacity factor is the ability of the eligible county to generate ad valorem revenues from one mill of taxation on a per capita basis. A county that raises no more than \$25 per capita from one mill shall be assigned a value of 1; a county that raises more than \$25 but no more than \$30 per capita from one mill shall be assigned a value of 0.75; and a county that raises more than \$30 but no more than \$50 per capita from one mill shall be assigned a value of 0.5. No value shall be assigned to counties that raise more than \$50 per capita from one mill of ad valorem taxation.

- The local-effort factor is a measure of the relative level of local effort of the eligible county as indicated by the previous year's millage rate. The local-effort factor is the most recently adopted countywide operating millage rate for each eligible county multiplied by 0.1.
- Each eligible county's proportional allocation of the total amount available to be distributed to all of the eligible counties is the same proportion as the sum of the county's two factors is to the sum of the two factors for all eligible counties

For counties that no longer qualify as a "fiscally constrained county" after the effective date of this act, there will be a 2-year phase-out period. Beginning on July 1 of the year following the year in which the value of a mill for that county exceeds \$4 million in revenue, the county will receive two-thirds of the amount received in the prior year, and beginning on July 1 of the second year following the year in which the value of a mill for that county exceeds \$4 million in revenue, the county will receive one-third of the amount received in the last year that the county qualified as a fiscally constrained county. Following the 2-year phase-out period, the county will no longer be eligible to receive any distributions under this section unless the county again qualifies as a fiscally constrained county.

Distributions received by fiscally constrained counties may be used by a county for any public purpose, except to pay debt service on bonds, notes, certificates of participation, or any other forms of indebtedness.

Additional Distribution for Small Counties under Section 218.65(2), F.S.

Current Situation: Pursuant to s. 218.65(2), F.S., a county may receive, in addition to its regular distribution of funds from the Local Government Half-cent Sales Tax, an additional distribution if it is receiving less than a prescribed per capita amount. However, if the county has a population over 65,000, it must also meet additional criteria showing that it had minimal increases in their property tax base between 1977 and 1981. Once the county ceases to meet the criteria designated, it ceases to receive any supplemental distribution under this provision.

Effect of Proposed Changes: Under this bill, any county where the population grew to an amount over 65,000 would cease to qualify for a supplemental distribution under s. 218.65(2), F.S. However, for counties that no longer qualify under s. 218.65(2), F.S. after the effective date of this act, there will be a 2-year phase-out period. Beginning on July 1 of the year following the year in which the population grows above 65,000, the county will receive two-thirds of the amount received in the prior year, and beginning on July 1 of the second year following the year in which the population exceeds 65,000, the county will receive one-third of the amount received in the last year that the county qualified for such distribution. Following the 2-year phase-out period, the county will no longer be eligible to receive any distributions under this subsection.

Strategic Rural Marketing Program

Current Situation: One of the priority recommendations of the 2003 statewide strategic plan for economic development, "Roadmap to Florida's Future", is the implementation of an economic stimulus strategy for rural areas. To that end Enterprise Florida, Inc. (EFI) convened three forums, one in each of the State's Rural Areas of Critical Economic Concern (RACEC). EFI then coordinated a Rural Summit in Sebring on October 27, 2004. Participants included members of the local and regional economic development organizations, Rural Economic Development Initiative (REDI) members, regional partners, local businesses, utilities, (cooperatives and investor-owned) and interested persons. The outcome was the "7-Point Plan for Rural Florida" that would allow the three regions to speak with one voice, leverage limited resources and reach out to partner agencies and organizations for assistance and advocacy.

Further, the “7-Point Plan” was reviewed and overwhelmingly endorsed by the Rural Issues Working Group, the Enterprise Florida Partners Council, the Statewide Strategic Plan Committee and the Board of Directors for Enterprise Florida and accepted by the Office of Tourism, Trade and Economic Development (OTTED). Systemic issues will be addressed through the “7-Point Plan” developed at the Rural Summit.¹

Funds allocated for this initiative will be used, but not exclusively, for the following activities:

- Potential site identification
- Industry cluster identification and direct marketing
- Identification of costs and barriers related to site preparation – including permitting and infrastructure availability
- Development of regional memoranda of agreement and interlocal agreements with units of local government and property owners
- Development and implementation of incidental marketing support materials and expenses.

Effect of Proposed Changes: The bill amends s. 288.0656, F.S., to provide that OTTED may accept and administer moneys appropriated to the office to support the implementation of the rural priority recommendation within the statewide strategic economic development plan, including the development of significant regional economic development projects in each of the designated rural areas of critical economic concern. OTTED may contract with Enterprise Florida, Inc., to develop regional project implementation plan components to include the identification of potential sites, direct marketing campaigns within the industry clusters for each area, identification of costs and barriers related to site preparation including permitting and infrastructure availability, development of memoranda of agreement and interlocal agreements with participating property owners and units of local government within each area regarding the parameters of project participation, and the development of incidental marketing support materials and expenses.

The bill appropriates \$2 million from the General Revenue Fund for the 2006-2007 fiscal year to the Office of Tourism, Trade, and Economic Development for the implementation of the rural priority recommendation within the statewide strategic economic development plan.

Shared Responsibility for Juvenile Detention

Current Situation: In accordance with s. 985.2155(1), F.S., it is the policy of this state that the state and counties have a joint obligation to contribute to the financial support of detention care provided for juveniles. Therefore, each county or the state must pay the costs incurred by the county in providing detention care for juveniles for the period of time prior to final court disposition. However, the state pays all costs of detention care for juveniles for which a fiscally constrained county would otherwise be billed. The term “fiscally constrained county” is defined as a county designated as a rural area of critical economic concern under s. 288.0656, F.S., for which the value of a mill in the county is no more than \$3 million, based on the property valuations and tax data annually published by the Department of Revenue under s. 195.052, F.S.

Effect of Proposed Changes: This bill amends s. 985.2155(2), F.S., to redefine the term “fiscally constrained counties” for purposes of that section. Under the new definition, a county is fiscally constrained if the value of a mill in the county is no more than \$4 million. The new definition does not require a county to be classified as a “rural area of critical economic concern.” Twenty-eight counties qualify as a “fiscally constrained county” under this definition, including: Baker, Bradford, Calhoun, Columbia, De Soto, Dixie, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Sumter,

¹ Information provided by Bridget Merrill, Director, Rural Competitiveness and Policies, Enterprise Florida

Suwannee, Taylor, Union, Wakulla, and Washington. Highlands, Wakulla, and Sumter are the counties which do not currently qualify but will receive funds under this bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.20(6), F.S., to provide for 0.082 percent of available sales tax proceeds to be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund for distribution to fiscally constrained counties. In addition, it makes a number of stylistic changes to promote uniformity in the provisions of the statute, and deletes obsolete language.

Section 2. Amends s. 218.65, F.S., to provide for a transitional emergency distribution from the Local Government Half-cent Sales Tax Clearing Trust Fund to certain fiscally constrained counties and revises criteria for receiving certain funds from the Local Government Half-cent Sales Tax Clearing Trust Fund.

Section 3. Creates s. 218.67, F.S., providing a distribution formula to apportion the funds among fiscally constrained counties.

Section 4. Amends s. 288.0656, F.S., authorizing the Office of Tourism, Trade, and Economic Development to accept and administer moneys appropriated to the office to support the implementation of the rural priority recommendation within the statewide strategic economic development plan, including the development of significant regional economic development projects in each of the designated rural areas of critical economic concern.

Section 5. Amends s. 288.1169(6), F.S., to update a cross reference.

Section 6. Amends s. 985.2155, F.S., revising the definition of "fiscally constrained county".

Section 7. Provides an appropriation of \$2 million from the General Revenue Fund for the 2006-2007 fiscal year to the Office of Tourism, Trade, and Economic Development for the implementation of the rural priority recommendation within the statewide strategic economic development plan.

Section 8. Provides that this bill shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill will reduce the state's share of sales tax revenues, which the revenue estimating conference estimated to have a negative impact of \$15.9 million recurring to the General Revenue Fund.
2. Expenditures: This bill appropriates \$2 million from the General Revenue Fund for the 2006-2007 fiscal year to OTTED for the implementation of the rural priority recommendation within the statewide strategic economic development plan. In addition, the juvenile detention provision of this bill will result in approximately \$825,000 worth of additional expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: This bill will distribute annually to fiscally constrained counties a percentage of the state sales tax, which was estimated to equal \$15.9 million by the revenue estimating conference.

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other: None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 293

2006

A bill to be entitled

An act relating to fiscally constrained counties; amending s. 212.20, F.S.; providing for a distribution of tax revenue to fiscally constrained counties; amending s. 218.65, F.S.; providing for a transitional emergency distribution from the Local Government Half-cent Sales Tax Clearing Trust Fund to certain fiscally constrained counties; revising criteria for receiving certain funds from the Local Government Half-cent Sales Tax Clearing Trust Fund; creating s. 218.67, F.S.; providing eligibility criteria to qualify as a fiscally constrained county; providing for the distribution of additional funds to certain fiscally constrained counties; providing for a phaseout period; providing for the use of funds; amending s. 288.0656, F.S.; authorizing the Office of Tourism, Trade, and Economic Development to accept and administer moneys appropriated for rural economic development; authorizing the office to contract with Enterprise Florida, Inc.; amending s. 288.1169, F.S.; correcting a cross-reference; amending s. 985.2155, F.S.; revising the definition of the term "fiscally constrained county" applicable to shared county and state responsibility for juvenile detention; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (6) of section

HB 293

2006

29 | 212.20, Florida Statutes, is amended to read:

30 | 212.20 Funds collected, disposition; additional powers of
31 | department; operational expense; refund of taxes adjudicated
32 | unconstitutionally collected.--

33 | (6) Distribution of all proceeds under this chapter and s.
34 | 202.18(1)(b) and (2)(b) shall be as follows:

35 | (d) The proceeds of all other taxes and fees imposed
36 | pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
37 | and (2)(b) shall be distributed as follows:

38 | 1. In any fiscal year, the greater of \$500 million, minus
39 | an amount equal to 4.6 percent of the proceeds of the taxes
40 | collected pursuant to chapter 201, or 5 percent of all other
41 | taxes and fees imposed pursuant to this chapter or remitted
42 | pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
43 | monthly installments into the General Revenue Fund.

44 | 2. Two-tenths of one percent shall be transferred to the
45 | Ecosystem Management and Restoration Trust Fund to be used for
46 | water quality improvement and water restoration projects.

47 | 3. After the distribution under subparagraphs 1. and 2.,
48 | 8.814 percent of the amount remitted by a sales tax dealer
49 | located within a participating county pursuant to s. 218.61
50 | shall be transferred into the Local Government Half-cent Sales
51 | Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to
52 | be transferred pursuant to this subparagraph to the Local
53 | Government Half-cent Sales Tax Clearing Trust Fund shall be
54 | reduced by 0.1 percent, and the department shall distribute this
55 | amount to the Public Employees Relations Commission Trust Fund
56 | less \$5,000 each month, which shall be added to the amount

HB 293

2006

calculated in subparagraph 4. and distributed accordingly.

4. After the distribution under subparagraphs 1., 2., and 3., 0.095 percent of the available proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. After the distributions under subparagraphs 1., 2., 3., and 4., 2.0440 percent of the available proceeds ~~pursuant to this paragraph~~ shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

6. After the distributions under subparagraphs 1., 2., 3., and 4., 1.3409 percent of the available proceeds ~~pursuant to this paragraph~~ shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

7. After the distributions under subparagraphs 1., 2., 3.,

and 4., 0.082 percent of the available proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.67.

~~8.7.~~ Of the remaining proceeds:

a. In each fiscal year, the sum of \$29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties shall begin each fiscal year on or before January 5th and shall continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment shall continue until ~~such time that~~ the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards prior to July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 prior to July 1, 2000.

b. The department shall distribute \$166,667 monthly pursuant to s. 288.1162 to each applicant that has been

113 certified as a "facility for a new professional sports
114 franchise" or a "facility for a retained professional sports
115 franchise" pursuant to s. 288.1162. Up to \$41,667 shall be
116 distributed monthly by the department to each applicant that has
117 been certified as a "facility for a retained spring training
118 franchise" pursuant to s. 288.1162; however, not more than
119 \$208,335 may be distributed monthly in the aggregate to all
120 certified facilities for a retained spring training franchise.
121 Distributions shall begin 60 days following such certification
122 and shall continue for not more than 30 years. Nothing contained
123 in this paragraph shall be construed to allow an applicant
124 certified pursuant to s. 288.1162 to receive more in
125 distributions than actually expended by the applicant for the
126 public purposes provided for in s. 288.1162(6). However, a
127 certified applicant is entitled to receive distributions up to
128 the maximum amount allowable and undistributed under this
129 section for additional renovations and improvements to the
130 facility for the franchise without additional certification.

131 c. Beginning 30 days after notice by the Office of
132 Tourism, Trade, and Economic Development to the Department of
133 Revenue that an applicant has been certified as the professional
134 golf hall of fame pursuant to s. 288.1168 and is open to the
135 public, \$166,667 shall be distributed monthly, for up to 300
136 months, to the applicant.

137 d. Beginning 30 days after notice by the Office of
138 Tourism, Trade, and Economic Development to the Department of
139 Revenue that the applicant has been certified as the
140 International Game Fish Association World Center facility

HB 293

2006

pursuant to s. 288.1169, and the facility is open to the public,
\$83,333 shall be distributed monthly, for up to 168 months, to
the applicant. This distribution is subject to reduction
pursuant to s. 288.1169. ~~A lump sum payment of \$999,996 shall be
made, after certification and before July 1, 2000.~~

9.8. All other proceeds shall remain with the General
Revenue Fund.

Section 2. Section 218.65, Florida Statutes, is amended to
read:

218.65 Emergency distribution.--

(1) Each county government which meets the provisions of
subsection (2) or subsection (8) ~~(7)~~ and which participates in
the local government half-cent sales tax shall receive a
distribution from the Local Government Half-cent Sales Tax
Clearing Trust Fund in addition to its regular monthly
distribution as provided in this part.

(2) The Legislature hereby finds and declares that a
fiscal emergency exists in any county which meets the following
~~criteria specified in paragraph (a), if applicable, and the
criterion specified in paragraph (b):~~

(a) ~~If~~ The county has a population of 65,000 or less; and
~~above.~~

~~1. In any year from 1977 to 1981, inclusive, the value of
net new construction and additions placed on the tax roll for
that year was less than 2 percent of the taxable value for
school purposes on the roll for that year, exclusive of such net
value; or~~

~~2. The percentage increase in county taxable value from~~

HB 293

2006

169 | ~~1979 to 1980, 1980 to 1981, or 1981 to 1982 was less than 3~~
 170 | ~~percent.~~

171 | (b) The moneys distributed to the county government
 172 | pursuant to s. 218.62 for the prior fiscal year were less than
 173 | the current per capita limitation, based on the population of
 174 | that county.

175 | (3) Qualification under this section shall be determined
 176 | annually at the start of the fiscal year. Emergency and
 177 | supplemental moneys shall be distributed monthly with other
 178 | moneys provided pursuant to this part.

179 | (4) For the fiscal year beginning in 1988, the per capita
 180 | limitation shall be \$24.60. Thereafter, commencing with the
 181 | fiscal year which begins in 1989, this limitation shall be
 182 | adjusted annually for inflation. The annual adjustment to the
 183 | per capita limitation for each fiscal period shall be the
 184 | percentage change in the state and local government price
 185 | deflator for purchases of goods and services, all items, 1983
 186 | equals 100, or successor reports for the preceding calendar year
 187 | as initially reported by the United States Department of
 188 | Commerce, Bureau of Economic Analysis, as certified by the
 189 | Florida Consensus Estimating Conference.

190 | (5) At the beginning of each fiscal year, the Department
 191 | of Revenue shall calculate a base allocation for each eligible
 192 | county equal to the difference between the current per capita
 193 | limitation times the county's population, minus prior year
 194 | ordinary distributions to the county pursuant to ss.
 195 | 212.20(6)(d)3., 218.61, and 218.62. If moneys deposited into the
 196 | Local Government Half-cent Sales Tax Clearing Trust Fund

pursuant to s. 212.20(6)(d)4., excluding moneys appropriated for supplemental distributions pursuant to subsection ~~(8)(7)~~, for the current year are less than or equal to the sum of the base allocations, each eligible county shall receive a share of the appropriated amount proportional to its base allocation. If the deposited amount exceeds the sum of the base allocations, each county shall receive its base allocation, and the excess appropriated amount, less any amounts distributed under subsection (6), shall be distributed equally on a per capita basis among the eligible counties.

(6) If moneys deposited in the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20(6)(d)4. exceed the amount necessary to provide the base allocation to each eligible county, the moneys in the trust fund may be used to provide a transitional distribution, as specified in this subsection, to certain counties whose population has increased. The transitional distribution shall be made available to each county that qualified for a distribution under subsection (2) in the prior year but does not, because of the requirements of paragraph (2)(a), qualify for a distribution in the current year. Beginning on July 1 of the year following the year in which the county no longer qualifies for a distribution under subsection (2), the county shall receive two-thirds of the amount received in the prior year, and beginning July 1 of the second year following the year in which the county no longer qualifies for a distribution under subsection (2), the county shall receive one-third of the amount it received in the last year it qualified for the distribution under subsection (2). If

HB 293

2006

225 | insufficient moneys are available in the Local Government Half-
 226 | cent Sales Tax Clearing Trust Fund to fully provide such a
 227 | transitional distribution to each county that meets the
 228 | eligibility criteria in this section, each eligible county shall
 229 | receive a share of the available moneys proportional to the
 230 | amount it would have received had moneys been sufficient to
 231 | fully provide such a transitional distribution to each eligible
 232 | county.

233 | ~~(7)~~(6) There is hereby annually appropriated from the
 234 | Local Government Half-cent Sales Tax Clearing Trust Fund the
 235 | distribution provided in s. 212.20(6)(d)4. to be used for
 236 | emergency and supplemental distributions pursuant to this
 237 | section.

238 | ~~(8)~~(7)(a) Any county the inmate population of which in any
 239 | year is greater than 7 percent of the total population of the
 240 | county is eligible for a supplemental distribution for that year
 241 | from funds expressly appropriated therefor. At the beginning of
 242 | each fiscal year, the Department of Revenue shall calculate a
 243 | supplemental allocation for each eligible county equal to the
 244 | current per capita limitation pursuant to subsection (4) times
 245 | the inmate population of the county. If moneys appropriated for
 246 | distribution pursuant to this section for the current year are
 247 | less than the sum of supplemental allocations, each eligible
 248 | county shall receive a share of the appropriated amount
 249 | proportional to its supplemental allocation. Otherwise, each
 250 | shall receive an amount equal to its supplemental allocation.

251 | (b) For the purposes of this subsection, the term:

252 | 1. "Inmate population" means the latest official state

HB 293

2006

estimate of the number of inmates and patients residing in institutions operated by the Federal Government, the Department of Corrections, or the Department of Children and Family Services.

2. "Total population" includes inmate population and noninmate population.

Section 3. Section 218.67, Florida Statutes, is created to read:

218.67 Distribution for fiscally constrained counties.--

(1) Each county for which the value of a mill will raise no more than \$4 million in revenue, based on the property valuations and tax data annually published by the Department of Revenue under s. 195.052, shall be considered a fiscally constrained county.

(2) Each fiscally constrained county government that participates in the local government half-cent sales tax shall be eligible to receive an additional distribution from the Local Government Half-cent Sales Tax Clearing Trust Fund, as provided in s. 212.20, in addition to its regular monthly distribution provided under this part and any emergency or supplemental distribution under s. 218.65.

(3) The amount to be distributed to each fiscally constrained county shall be determined by the Department of Revenue at the beginning of the fiscal year, using the prior fiscal year property valuations, tax data, and population estimates and the millage rate levied for the prior fiscal year. The amount distributed shall be allocated based upon the following factors:

(a) The relative revenue-raising-capacity factor shall be the ability of the eligible county to generate ad valorem revenues from 1 mill of taxation on a per capita basis. A county that raises no more than \$25 per capita from 1 mill shall be assigned a value of 1; a county that raises more than \$25 but no more than \$30 per capita from 1 mill shall be assigned a value of 0.75; and a county that raises more than \$30 but no more than \$50 per capita from 1 mill shall be assigned a value of 0.5. No value shall be assigned to counties that raise more than \$50 per capita from 1 mill of ad valorem taxation.

(b) The local-effort factor shall be a measure of the relative level of local effort of the eligible county as indicated by the millage rate levied for the prior fiscal year. The local-effort factor shall be the most recently adopted countywide operating millage rate for each eligible county multiplied by 0.1.

(c) Each eligible county's proportional allocation of the total amount available to be distributed to all of the eligible counties shall be in the same proportion as the sum of the county's two factors is to the sum of the two factors for all eligible counties. The counties that are eligible to receive an allocation under this subsection and the amount available to be distributed to such counties shall not include counties participating in the phaseout period under subsection (4) or the amounts they remain eligible to receive during the phaseout.

(4) For those counties that no longer qualify under the requirements of subsection (1) after the effective date of this act, there shall be a 2-year phaseout period. Beginning on July

HB 293

2006

1 of the year following the year in which the value of a mill for that county exceeds \$4 million in revenue, the county shall receive two-thirds of the amount received in the prior year, and beginning on July 1 of the second year following the year in which the value of a mill for that county exceeds \$4 million in revenue, the county shall receive one-third of the amount received in the last year that the county qualified as a fiscally constrained county. Following the 2-year phaseout period, the county shall no longer be eligible to receive any distributions under this section unless the county can be considered a fiscally constrained county as provided in subsection (1).

(5) The revenues received under this section may be used by a county for any public purpose, except that such revenues may not be used to pay debt service on bonds, notes, certificates of participation, or any other forms of indebtedness.

Section 4. Subsection (7) of section 288.0656, Florida Statutes, is amended to read:

288.0656 Rural Economic Development Initiative.--

(7) REDI may recommend to the Governor up to three rural areas of critical economic concern.

(a) A rural area of critical economic concern must be a rural community, or a region composed of such, that has been adversely affected by an extraordinary economic event or a natural disaster or that presents a unique economic development opportunity of regional impact that will create more than 1,000 jobs over a 5-year period. The Governor may by executive order

HB 293

2006

designate up to three rural areas of critical economic concern which will establish these areas as priority assignments for REDI as well as to allow the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive. Such incentives shall include, but not be limited to: the Qualified Target Industry Tax Refund Program under s. 288.106, the Quick Response Training Program under s. 288.047, the Quick Response Training Program for participants in the welfare transition program under s. 288.047(8), transportation projects under s. 288.063, the brownfield redevelopment bonus refund under s. 288.107, and the rural job tax credit program under ss. 212.098 and 220.1895. Designation as a rural area of critical economic concern under this subsection shall be contingent upon the execution of a memorandum of agreement among the Office of Tourism, Trade, and Economic Development; the governing body of the county; and the governing bodies of any municipalities to be included within a rural area of critical economic concern. Such agreement shall specify the terms and conditions of the designation, including, but not limited to, the duties and responsibilities of the county and any participating municipalities to take actions designed to facilitate the retention and expansion of existing businesses in the area, as well as the recruitment of new businesses to the area.

(b) The Office of Tourism, Trade, and Economic Development may accept and administer moneys appropriated to the office to support the implementation of the rural priority recommendation within the statewide strategic economic development plan as

provided in s. 288.905, including the development of significant regional economic development projects in each of the designated rural areas of critical economic concern. The office may contract with Enterprise Florida, Inc., to develop regional project implementation plan components to include, but not be limited to, the identification of potential sites, direct marketing campaigns within the industry clusters for each area, identification of costs and barriers related to site preparation including permitting and infrastructure availability, development of memoranda of agreement and interlocal agreements with participating property owners and units of local government within each area regarding the parameters of project participation, and the development of incidental marketing support materials and expenses. The office may approve the expenditure of funds under this paragraph only to the extent that funds are appropriated for such purpose by the Legislature.

Section 5. Subsection (6) of section 288.1169, Florida Statutes, is amended to read:

288.1169 International Game Fish Association World Center facility.--

(6) The Department of Commerce must recertify every 10 years that the facility is open, that the International Game Fish Association World Center continues to be the only international administrative headquarters, fishing museum, and Hall of Fame in the United States recognized by the International Game Fish Association, and that the project is meeting the minimum projections for attendance or sales tax revenues as required at the time of original certification. If

HB 293

2006

the facility is not recertified during this 10-year review as meeting the minimum projections, then funding will be abated until certification criteria are met. If the project fails to generate \$1 million of annual revenues pursuant to paragraph (2)(e), the distribution of revenues pursuant to s. ~~212.20(6)(d)8.d. 212.20(6)(d)7.d.~~ shall be reduced to an amount equal to \$83,333 multiplied by a fraction, the numerator of which is the actual revenues generated and the denominator of which is \$1 million. Such reduction shall remain in effect until revenues generated by the project in a 12-month period equal or exceed \$1 million.

Section 6. Paragraph (b) of subsection (2) of section 985.2155, Florida Statutes, is amended to read:

985.2155 Shared county and state responsibility for juvenile detention.--

(2) As used in this section, the term:

(b) "Fiscally constrained county" means a county ~~designated as a rural area of critical economic concern under s. 288.0656~~ for which the value of a mill in the county is no more than \$4 ~~\$3~~ million, based on the property valuations and tax data annually published by the Department of Revenue under s. 195.052.

Section 7. There is hereby appropriated the sum of \$2 million from the General Revenue Fund for the 2006-2007 fiscal year to the Office of Tourism, Trade, and Economic Development for the implementation of the rural priority recommendation within the statewide strategic economic development plan.

Section 8. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **HB 293**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Fiscal Council
Representative(s) Pickens offered the following:

Amendment (with amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (6) of section
212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of
department; operational expense; refund of taxes adjudicated
unconstitutionally collected.--

(6) Distribution of all proceeds under this chapter and s.
202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed
pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of \$500 million, minus
an amount equal to 4.6 percent of the proceeds of the taxes
collected pursuant to chapter 201, or 5 percent of all other
taxes and fees imposed pursuant to this chapter or remitted
pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
monthly installments into the General Revenue Fund.

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

2. Two-tenths of one percent shall be transferred to the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects.

3. After the distribution under subparagraphs 1. and 2., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less \$5,000 each month, which shall be added to the amount calculated in subparagraph 4. and distributed accordingly.

4. After the distribution under subparagraphs 1., 2., and 3., 0.095 percent of the available proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. After the distributions under subparagraphs 1., 2., 3., and 4., 2.0440 percent of the available proceeds ~~pursuant to this paragraph~~ shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

6. After the distributions under subparagraphs 1., 2., 3., and 4., 1.3409 percent of the available proceeds ~~pursuant to this paragraph~~ shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

7. After the distributions under subparagraphs 1., 2., 3., and 4., 0.082 percent of the available proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.67.

8.7- Of the remaining proceeds:

a. In each fiscal year, the sum of \$29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties shall begin each fiscal year on or before January 5th and shall continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment shall continue until ~~such time that~~ the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards prior to July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

82 holders or relieve local governments, special districts, or
83 district school boards of the duty to meet their obligations as
84 a result of previous pledges or assignments or trusts entered
85 into which obligated funds received from the distribution to
86 county governments under then-existing s. 550.135. This
87 distribution specifically is in lieu of funds distributed under
88 s. 550.135 prior to July 1, 2000.

89 b. The department shall distribute \$166,667 monthly
90 pursuant to s. 288.1162 to each applicant that has been
91 certified as a "facility for a new professional sports
92 franchise" or a "facility for a retained professional sports
93 franchise" pursuant to s. 288.1162. Up to \$41,667 shall be
94 distributed monthly by the department to each applicant that has
95 been certified as a "facility for a retained spring training
96 franchise" pursuant to s. 288.1162; however, not more than
97 \$208,335 may be distributed monthly in the aggregate to all
98 certified facilities for a retained spring training franchise.
99 Distributions shall begin 60 days following such certification
100 and shall continue for not more than 30 years. Nothing contained
101 in this paragraph shall be construed to allow an applicant
102 certified pursuant to s. 288.1162 to receive more in
103 distributions than actually expended by the applicant for the
104 public purposes provided for in s. 288.1162(6). However, a
105 certified applicant is entitled to receive distributions up to
106 the maximum amount allowable and undistributed under this
107 section for additional renovations and improvements to the
108 facility for the franchise without additional certification.

109 c. Beginning 30 days after notice by the Office of
110 Tourism, Trade, and Economic Development to the Department of
111 Revenue that an applicant has been certified as the professional

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

golf hall of fame pursuant to s. 288.1168 and is open to the public, \$166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, \$83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. ~~A lump sum payment of \$999,996 shall be made, after certification and before July 1, 2000.~~

~~9.8.~~ All other proceeds shall remain with the General Revenue Fund.

Section 2. Section 218.65, Florida Statutes, is amended to read:

218.65 Emergency distribution.--

(1) Each county government which meets the provisions of subsection (2) or subsection ~~(8)~~~~(7)~~ and which participates in the local government half-cent sales tax shall receive a distribution from the Local Government Half-cent Sales Tax Clearing Trust Fund in addition to its regular monthly distribution as provided in this part.

(2) The Legislature hereby finds and declares that a fiscal emergency exists in any county which meets the following ~~criteria specified in paragraph (a), if applicable, and the criterion specified in paragraph (b):~~

(a) ~~If~~ The county has a population of 65,000 or less; and
~~above:~~

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

1. ~~In any year from 1977 to 1981, inclusive, the value of net new construction and additions placed on the tax roll for that year was less than 2 percent of the taxable value for school purposes on the roll for that year, exclusive of such net value, or~~

2. ~~The percentage increase in county taxable value from 1979 to 1980, 1980 to 1981, or 1981 to 1982 was less than 3 percent.~~

(b) The moneys distributed to the county government pursuant to s. 218.62 for the prior fiscal year were less than the current per capita limitation, based on the population of that county.

(3) Qualification under this section shall be determined annually at the start of the fiscal year. Emergency and supplemental moneys shall be distributed monthly with other moneys provided pursuant to this part.

(4) For the fiscal year beginning in 1988, the per capita limitation shall be \$24.60. Thereafter, commencing with the fiscal year which begins in 1989, this limitation shall be adjusted annually for inflation. The annual adjustment to the per capita limitation for each fiscal period shall be the percentage change in the state and local government price deflator for purchases of goods and services, all items, 1983 equals 100, or successor reports for the preceding calendar year as initially reported by the United States Department of Commerce, Bureau of Economic Analysis, as certified by the Florida Consensus Estimating Conference.

(5) At the beginning of each fiscal year, the Department of Revenue shall calculate a base allocation for each eligible county equal to the difference between the current per capita

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

171 limitation times the county's population, minus prior year
172 ordinary distributions to the county pursuant to ss.
173 212.20(6)(d)3., 218.61, and 218.62. If moneys deposited into the
174 Local Government Half-cent Sales Tax Clearing Trust Fund
175 pursuant to s. 212.20(6)(d)4., excluding moneys appropriated for
176 supplemental distributions pursuant to subsection (8)(7), for
177 the current year are less than or equal to the sum of the base
178 allocations, each eligible county shall receive a share of the
179 appropriated amount proportional to its base allocation. If the
180 deposited amount exceeds the sum of the base allocations, each
181 county shall receive its base allocation, and the excess
182 appropriated amount, less any amounts distributed under
183 subsection (6), shall be distributed equally on a per capita
184 basis among the eligible counties.

185 (6) If moneys deposited in the Local Government Half-cent
186 Sales Tax Clearing Trust Fund pursuant to s. 212.20(6)(d)4.
187 exceed the amount necessary to provide the base allocation to
188 each eligible county, the moneys in the trust fund may be used
189 to provide a transitional distribution, as specified in this
190 subsection, to certain counties whose population has increased.
191 The transitional distribution shall be made available to each
192 county that qualified for a distribution under subsection (2) in
193 the prior year but does not, because of the requirements of
194 paragraph (2)(a), qualify for a distribution in the current
195 year. Beginning on July 1 of the year following the year in
196 which the county no longer qualifies for a distribution under
197 subsection (2), the county shall receive two-thirds of the
198 amount received in the prior year, and beginning July 1 of the
199 second year following the year in which the county no longer
200 qualifies for a distribution under subsection (2), the county

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

201 shall receive one-third of the amount it received in the last
202 year it qualified for the distribution under subsection (2). If
203 insufficient moneys are available in the Local Government Half-
204 cent Sales Tax Clearing Trust Fund to fully provide such a
205 transitional distribution to each county that meets the
206 eligibility criteria in this section, each eligible county shall
207 receive a share of the available moneys proportional to the
208 amount it would have received had moneys been sufficient to
209 fully provide such a transitional distribution to each eligible
210 county.

211 ~~(7)~~(6) There is hereby annually appropriated from the
212 Local Government Half-cent Sales Tax Clearing Trust Fund the
213 distribution provided in s. 212.20(6)(d)4. to be used for
214 emergency and supplemental distributions pursuant to this
215 section.

216 ~~(8)~~(7)(a) Any county the inmate population of which in any
217 year is greater than 7 percent of the total population of the
218 county is eligible for a supplemental distribution for that year
219 from funds expressly appropriated therefor. At the beginning of
220 each fiscal year, the Department of Revenue shall calculate a
221 supplemental allocation for each eligible county equal to the
222 current per capita limitation pursuant to subsection (4) times
223 the inmate population of the county. If moneys appropriated for
224 distribution pursuant to this section for the current year are
225 less than the sum of supplemental allocations, each eligible
226 county shall receive a share of the appropriated amount
227 proportional to its supplemental allocation. Otherwise, each
228 shall receive an amount equal to its supplemental allocation.

229 (b) For the purposes of this subsection, the term:

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

230 1. "Inmate population" means the latest official state
231 estimate of the number of inmates and patients residing in
232 institutions operated by the Federal Government, the Department
233 of Corrections, or the Department of Children and Family
234 Services.

235 2. "Total population" includes inmate population and
236 noninmate population.

237 Section 3. Section 218.67, Florida Statutes, is created to
238 read:

239 218.67 Distribution for fiscally constrained counties.--

240 (1) Each county that is within a rural area of critical
241 economic concern as designated by the Governor pursuant to s.
242 288.0656 or each county for which the value of a mill will raise
243 no more than \$5 million in revenue, based on the certified
244 school taxable value from the previous July 1, shall be
245 considered a fiscally constrained county.

246 (2) Each fiscally constrained county government that
247 participates in the local government half-cent sales tax shall
248 be eligible to receive an additional distribution from the Local
249 Government Half-cent Sales Tax Clearing Trust Fund, as provided
250 in s. 212.20, in addition to its regular monthly distribution
251 provided under this part and any emergency or supplemental
252 distribution under s. 218.65.

253 (3) The amount to be distributed to each fiscally
254 constrained county shall be determined by the Department of
255 Revenue at the beginning of the fiscal year, using the prior
256 fiscal year's July 1 certified school taxable value, tax data,
257 population as defined in s. 218.21, and the millage rate levied
258 for the prior fiscal year. The amount distributed shall be
259 allocated based upon the following factors:

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

260 (a) The relative revenue-raising-capacity factor shall be
261 the ability of the eligible county to generate ad valorem
262 revenues from 1 mill of taxation on a per capita basis. A county
263 that raises no more than \$25 per capita from 1 mill shall be
264 assigned a value of 1; a county that raises more than \$25 but no
265 more than \$30 per capita from 1 mill shall be assigned a value
266 of 0.75; and a county that raises more than \$30 but no more than
267 \$50 per capita from 1 mill shall be assigned a value of 0.5. No
268 value shall be assigned to counties that raise more than \$50 per
269 capita from 1 mill of ad valorem taxation.

270 (b) The local-effort factor shall be a measure of the
271 relative level of local effort of the eligible county as
272 indicated by the millage rate levied for the prior fiscal year.
273 The local-effort factor shall be the most recently adopted
274 countywide operating millage rate for each eligible county
275 multiplied by 0.1.

276 (c) Each eligible county's proportional allocation of the
277 total amount available to be distributed to all of the eligible
278 counties shall be in the same proportion as the sum of the
279 county's two factors is to the sum of the two factors for all
280 eligible counties. The counties that are eligible to receive an
281 allocation under this subsection and the amount available to be
282 distributed to such counties shall not include counties
283 participating in the phaseout period under subsection (4) or the
284 amounts they remain eligible to receive during the phaseout.

285 (4) For those counties that no longer qualify under the
286 requirements of subsection (1) after the effective date of this
287 act, there shall be a 2-year phaseout period. Beginning on July
288 1 of the year following the year in which the value of a mill
289 for that county exceeds \$5 million in revenue, the county shall

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

290 receive two-thirds of the amount received in the prior year, and
291 beginning on July 1 of the second year following the year in
292 which the value of a mill for that county exceeds \$5 million in
293 revenue, the county shall receive one-third of the amount
294 received in the last year that the county qualified as a
295 fiscally constrained county. Following the 2-year phaseout
296 period, the county shall no longer be eligible to receive any
297 distributions under this section unless the county can be
298 considered a fiscally constrained county as provided in
299 subsection (1).

300 (5) The revenues received under this section may be used
301 by a county for any public purpose, except that such revenues
302 may not be used to pay debt service on bonds, notes,
303 certificates of participation, or any other forms of
304 indebtedness.

305 Section 4. Subsection (6) of section 288.1169, Florida
306 Statutes, is amended to read:

307 288.1169 International Game Fish Association World Center
308 facility.--

309 (6) The Department of Commerce must recertify every 10
310 years that the facility is open, that the International Game
311 Fish Association World Center continues to be the only
312 international administrative headquarters, fishing museum, and
313 Hall of Fame in the United States recognized by the
314 International Game Fish Association, and that the project is
315 meeting the minimum projections for attendance or sales tax
316 revenues as required at the time of original certification. If
317 the facility is not recertified during this 10-year review as
318 meeting the minimum projections, then funding will be abated
319 until certification criteria are met. If the project fails to

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

generate \$1 million of annual revenues pursuant to paragraph
(2)(e), the distribution of revenues pursuant to s.
212.20(6)(d)8.d. ~~212.20(6)(d)7.d.~~ shall be reduced to an amount
equal to \$83,333 multiplied by a fraction, the numerator of
which is the actual revenues generated and the denominator of
which is \$1 million. Such reduction shall remain in effect until
revenues generated by the project in a 12-month period equal or
exceed \$1 million.

Section 5. Paragraph (b) of subsection (2) of section
985.2155, Florida Statutes, is amended to read:

985.2155 Shared county and state responsibility for
juvenile detention.--

(2) As used in this section, the term:

(b) "Fiscally constrained county" means a county
~~designated as a rural area of critical economic concern under s.~~
~~288.0656~~ for which the value of a mill in the county is no more
than \$5 ~~\$3~~ million, based on the property valuations and tax
data annually published by the Department of Revenue under s.
195.052.

Section 6. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to fiscally constrained counties; amending
s. 212.20, F.S.; providing for a distribution of tax
revenue to fiscally constrained counties; amending s.
218.65, F.S.; providing for a transitional emergency
distribution from the Local Government Half-cent Sales Tax

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Clearing Trust Fund to certain fiscally constrained
counties; revising criteria for receiving certain funds
from the Local Government Half-cent Sales Tax Clearing
Trust Fund; creating s. 218.67, F.S.; providing
eligibility criteria to qualify as a fiscally constrained
county; providing for the distribution of additional funds
to certain fiscally constrained counties; providing for a
phaseout period; providing for the use of funds; amending
s. 288.1169, F.S.; correcting a cross-reference; amending
s. 985.2155, F.S.; revising the definition of the term
"fiscally constrained county" applicable to shared county
and state responsibility for juvenile detention; providing
an effective date.

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 493 CS

Ethics for Public Officers and Employees

SPONSOR(S): Ryan

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Ethics & Elections Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Shaffer</u>	<u>Mitchell</u>
2) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Brown/Williamson</u>	<u>Williamson</u>
3) <u>Fiscal Council</u>	<u></u>	<u>Dobbs</u>	<u>Kelly <i>ck</i></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill clarifies and revises portions of the Code of Ethics of the State of Florida, and provides for additional restrictions on the conduct of current and former government employees and elected officials. The bill:

- Prohibits government employees from working in political campaigns while on duty.
- Allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years.
- Changes the method for disclosing assets and liabilities.
- Requires disclosure of gifts by those leaving employment the previous calendar year by July 1.
- Allows the Attorney General to collect costs incurred in bringing a civil action to recover penalties.
- Allows disaffected state employees to work for the private entity who assumes the employees' former duties.
- Increases the rulemaking authority of the Commission on Ethics (commission).
- Suspends a lobbyist's registration if the lobbyist fails to pay a fine until the fine is paid or waived.

The bill also entitles a witness required to travel outside of the county of his or her residence in order to testify before the commission to be reimbursed for per diem and travel expenses at the same rate as state employees.

The certified reminder mailing sent to delinquent filers in July of each year by the commission and each supervisor of elections must have a return receipt.

The bill provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill increases the rulemaking authority of the commission.

Promote Personal Responsibility – The bill requires principled behavior by those serving in the public sector.

B. EFFECT OF PROPOSED CHANGES:

Background

The Code of Ethics for Public Officers and Employees (code)¹ sets forth certain requirements and guidelines governing the conduct of public officers and employees. Section 112.311, F.S., outlines three basic objectives of the code:

- Requires that the law protect against any conflict of interest and that it establish standards for the conduct of elected officials and government employees.
- Recognizes that government must attract those citizens best qualified to serve.²
- Provides that it is necessary that the identity, expenditures, and activities of those persons who regularly engage in efforts to persuade public officials to take specific actions be disclosed to the public in order to preserve and maintain the integrity of the governmental process.

It is the policy of the state that no officer or employee of the state, a local government, or the Legislature has any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature that is in substantial conflict with the proper discharge of his or her duties.³ Public officers and employees of the state or of a local government are agents of the people and hold their positions for the benefit of the public. Such persons are bound to observe, in their official acts, the highest standards of ethics consistent with the code regardless of personal considerations.⁴

A person elected to any county, municipality, special district, or school district office may not personally represent another person or entity for compensation before the governing body of which the person was an officer for a period of two years after vacating that office.⁵ This only applies to former office holders lobbying current office holders. Public officers, agency employees, and local government attorneys also are barred from disclosing or using information not available to the public and gained because of that person's official position, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.⁶

Office holders must annually file statements of their personal financial interests. The failure to file a timely report results in a fine of \$25 per day, with a maximum aggregate penalty of \$1,500. Any reporting person may appeal or dispute a fine, and may base that appeal upon unusual circumstances surrounding the failure to file on the designated date. The person is entitled to a

¹ Chapter 112, Part III, F.S.

² Thus, the law against conflict of interest must be so designed as not to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve.

³ Section 112.311(5), F.S.

⁴ Section 112.311(6), F.S.

⁵ Section 112.313, F.S.

⁶ *Id.*

hearing before the Commission on Ethics (commission), which is permitted to waive the fine in whole or in part for good cause shown.⁷

The commission has the duty of receiving and investigating sworn complaints of violations of the code. The commission is authorized only to investigate alleged violations of the code upon a written complaint executed on a form prescribed by the commission and signed under oath or affirmation by any person.⁸ The commission has the power to subpoena witnesses.⁹ Violations of any provision of the code can result in various penalties, which include requiring the violator to pay restitution of any pecuniary benefits received because of the violations committed.¹⁰

HB 1377 CS, which was similar to the current bill, passed the Legislature in 2005 and was vetoed by the Governor.¹¹ This bill attempts to address the Governor's concerns.

Effects of Proposed Changes

The bill prohibits all state and political subdivision employees from participating in a political campaign for an elective office while on duty.

The bill amends the prohibition against using "inside" information gained while in a public position to benefit oneself or another to clarify that it does not apply to information relating exclusively to governmental practices.

The bill amends the two-year "revolving door" prohibition against representing a client before one's former agency. It allows Selected Exempt employees, transferred from Career Service under Service First, to lobby their former agency immediately upon termination, instead of having to wait two years. The bill also clarifies that the revolving door prohibition against representing a client before one's former agency applies to other-personal-services (OPS) employees who had conferred upon them the same powers as the individuals covered in the prohibition.

Conflict of interest disclosure statements (applicable for competitive bidding) must be filed with the commission instead of the Department of State. For two years after leaving office local elected officials are prohibited from personally representing another person or entity for compensation before the agency for which they were an officer.

The certified reminder mailing sent to delinquent filers in July of each year by the commission and each supervisor of elections must have a return receipt. This allows the commission to determine whether the mailing was actually received and by whom. The bill also allows the commission to waive the penalty for failure to timely file a statement of financial interests only when the person did not receive proper notice of the requirements of filing an annual disclosure.

By October 1 of each year, all supervisors of election must certify to the commission a list of names and addresses of all persons failing to timely file a statement of financial interests. Current law requires such certification by November 15. The bill also provides that a \$1,500 limitation on automatic fines for failing to file a financial statement does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline.

⁷ Section 112.3145, F.S.

⁸ Section 112.324, F.S.

⁹ Section 112.322, F.S.

¹⁰ Section 112.317, F.S.

¹¹ The Governor's veto message stated "the bill contains ambiguous language that could unduly punish state employees who seek to transition to the private sector . . . Government employees come into contact daily with actions and issues with which they are not necessarily actively engaged on behalf of the agency; they should not be restricted from future employment in these tangential subject matters as a result. This legislation could have a draconian impact on the ability of the State to recruit employees who eventually aspire to return to the private sector. I am also concerned by a provision in the bill that carves out an exemption to lobbying laws for a handful of state employees . . . Florida's lobbying laws should be applied uniformly. Creating exemptions sets a bad precedent." Veto letter by Governor Bush, HB 1377, June 15, 2005.

The bill requires the filing of gift disclosure forms for the last portion of one's term of office or employment, and allows quarterly gift disclosure forms to be considered timely filed if postmarked on or before the due date. Honorarium-expense disclosure forms must be filed for the last portion of one's term of office or employment.

The bill authorizes the commission to recommend payment of any restitution penalty to the agency where the employee worked, where the officer was deemed an employee, or to the General Revenue Fund. Further, when the Attorney General is required to file a civil action to collect a penalty, the Attorney General shall collect any costs incurred in bringing the action.

The bill deletes s. 112.317(6), F.S., which the federal courts have declared unconstitutional (this section provided that breaching confidentiality of an ethics proceeding was a misdemeanor).

The bill eases existing post-employment restrictions for state employees whose jobs are privatized and who are employed by that private entity.

The bill prohibits an individual who qualifies as a lobbyist under ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance from serving on the commission except for those individuals who are members of the commission on October 1, 2006, until the expiration of their current term. A member of the commission may not lobby any state or local government entity as provided by ss. 11.045 or 112.3215, F.S., or a local government charter or ordinance. The same exception applies.

The bill also defines "government body or agency" for various situations. Specifically:

- For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
- For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.
- For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
- For an elected special district officer, the phrase refers to the special district.
- For an elected school district officer, the phrase refers to the school district.

The bill increases the commission's rule-making authority regarding the grounds for waiving a fine and the procedure for appealing that fine.

A witness required by the commission to testify outside the county of his or her residence is entitled to per diem and travel expenses reimbursed at the state rate.

Finally, the bill provides that an official investigation includes an investigation instituted by the commission and that an official proceeding includes a proceeding before the commission.

C. SECTION DIRECTORY:

Section 1 amends s. 104.31, F.S., prohibiting employees of the state and its political subdivisions from participating in a political campaign while on duty.

Section 2 amends s. 112.313, F.S., relating to standards of conduct for public officers, employees of agencies, and local government attorneys.

Section 3 amends s. 112.3144, F.S., specifying how a reporting individual reports assets and liabilities valued in excess of a specified amount.

Section 4 amends s. 112.3145, F.S., requiring that a delinquency notice be sent to certain officeholders by certified mail, return receipt requested.

Section 5 amends s. 112.3147, F.S., deleting provisions relating to the reporting of assets and liabilities valued in excess of a specified amount, to conform.

Section 6 amends s. 112.3148, F.S., regarding filing a report relating to gifts.

Section 7 amends s. 112.3149, F.S., requiring the filing of a report of honoraria by a specified date.

Section 8 amends s. 112.317, F.S., regarding penalties.

Section 9 amends s. 112.3185, F.S., providing additional standards for former state agency employees doing business with their former agency.

Section 10 amends s. 112.321, F.S., prohibiting an individual who qualifies as a lobbyist from serving on the commission; prohibiting a member of the commission from lobbying any state or local governmental entity; providing exceptions.

Section 11 amends s. 112.3215, F.S., increasing the rulemaking authority of the commission.

Section 12 amends s. 112.322, F.S., authorizing reimbursement of travel and per diem expenses for certain witnesses.

Section 13 amends s. 914.21, F.S., amending definitions.

Section 14 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

An officer or employee violating ch. 112, F.S., could be required to pay a civil or restitution penalty to the agency for which the violating officer was a member or the employee was employed, or pay the penalty to the General Revenue Fund. The attorney general is entitled to collect any costs, attorney's fees, expert witness fees, or other costs incurred in bringing a civil action to recover such penalties.

2. Expenditures:

A witness, required to travel outside the county of his or her residence in order to testify before the commission, is entitled to per diem and travel expenses at the same rate as state employees. The commission rarely pays for the travel of witnesses because the hearings are usually held locally.

The commission is required to pay the cost of return receipt mail (\$1.85 per item) to send delinquency notices. The commission already sends the notices with return receipt.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Each election supervisor is required to pay the cost of return receipt mail (\$1.85 per item) to send delinquency notices. All but two election supervisors currently sends notices with return receipt.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The additional cost to the commission and to the elections supervisors will be absorbed within existing budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does require counties or municipalities to spend funds for return receipt mailings, however, the estimated expenditure amount is expected to be less than \$1.8 million and is insignificant. The bill is therefore exempt from the provisions of Section 18(b), Article VII of the State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill increases the rulemaking authority of the commission. The commission must adopt rules to provide grounds for waiving a fine and the procedures associated with appealing that fine when a lobbyist fails to timely file a report. Current law already authorizes the commission to adopt a rule to provide a procedure for notifying a lobbyist who fails to timely file a report.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Ethics & Elections Committee

The Ethics & Elections Committee adopted an amendment to the bill on January 25, 2006. The amendment changes section 112.3215, F.S., so that it tracks similar language in section 11.045, F.S., which was added by SB 6-B during Special Session 2005 B. HB 493 had been filed before SB 6-B was enacted.

The amendment further amends subsection (5) of section 112.3215, F.S., to clarify that lobbyist registrations for all "partners, owners, officers, or employees" are automatically suspended until a fine is paid or waived.

Governmental Operations Committee

At its meeting on March 22, 2006, the Governmental Operations Committee adopted three amendments addressing the following concerns:

- Clarifies the grandfathering clause applying to agency employees who were employed on July 1, 2001 in a Career Service System position that was transferred to the Selected Exempt Service System.
- Defining "government body or agency" in various ways, for varying situations. Specifically:
 - For a board of county commissioners, "government body or agency" means the commission, the chief administrative officer or employee of the county, and their immediate support staff.
 - For any other elected county officer, the phrase includes the office or department headed by that officer and all subordinate employees.
 - For an elected municipal officer, the phrase covers the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.
 - For an elected special district officer, the phrase refers to the special district.

- For an elected school district officer, the phrase refers to the school district.
- Removes one particular prohibition deemed overly-broad. The prohibition barred former employees from representing any entity for compensation, in any matter in which the employee “participated personally and substantially in his or her official capacity through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee.”

HB 493 CS

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to ethics for public officers and employees; amending s. 104.31, F.S.; prohibiting employees of the state and its political subdivisions from participating in a political campaign, for which there are penalties; amending s. 112.313, F.S.; prohibiting certain disclosures by a former public officer, agency employee, or local government attorney, for which there are penalties; redefining the term "employee" to include certain other-personal-services employees for certain postemployment activities; exempting certain agency employees from applicability of postemployment restrictions; providing an exemption from provisions prohibiting conflicts in employment to a person who, after serving on an advisory board, files a statement with the Commission on Ethics relating to a bid or submission; providing definitions; amending s. 112.3144, F.S.; specifying how assets valued in excess of a specified amount are to be reported by a reporting individual;

HB 493 CS

2006
CS

24 amending s. 112.3145, F.S.; requiring that a delinquency
25 notice be sent to certain officeholders by certified mail,
26 return receipt requested; amending s. 112.3147, F.S.;
27 deleting provisions relating to the reporting of assets
28 valued in excess of a specified amount, to conform;
29 amending s. 112.3148, F.S.; providing requirements for
30 persons who have left office or employment as to filing a
31 report relating to gifts; providing requirements relating
32 to the deadline for and timeliness of gift reports;
33 amending s. 112.3149, F.S.; requiring that a report of
34 honoraria by a person who left office or employment be
35 filed by a specified date; amending s. 112.317, F.S.;
36 authorizing the commission to recommend a restitution
37 penalty be paid to the agency of which the public officer
38 was a member or by which the public employee was employed
39 or to the General Revenue Fund; authorizing the Attorney
40 General to recover costs for filing suit to collect
41 penalties and fines; deleting provisions imposing a
42 penalty for the disclosure of information concerning a
43 complaint or an investigation; amending s. 112.3185, F.S.;
44 providing additional standards for state agency employees
45 relating to procurement of goods and services by a state
46 agency; authorizing an employee whose position was
47 eliminated to engage in certain contractual activities;
48 amending s. 112.321, F.S.; prohibiting an individual who
49 qualifies as a lobbyist from serving on the commission;
50 prohibiting a member of the commission from lobbying any
51 state or local governmental entity; providing exceptions

Page 2 of 28

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0493-02-c2

HB 493 CS

2006
CS

for individuals who are members of the commission on the effective date of the act until the expiration of their current terms; amending s. 112.3215, F.S.; requiring the commission to adopt a rule detailing the grounds for waiving a fine and the procedures to be followed when a lobbyist fails to timely file his or her report; requiring automatic suspension of certain lobbyist registrations if the fine is not timely paid; requiring the commission to provide written notice to any lobbyist whose registration is automatically suspended; amending s. 112.322, F.S.; authorizing travel and per diem expenses for certain witnesses; amending s. 914.21, F.S.; redefining the terms "official investigation" and "official proceeding," for purposes of provisions relating to tampering with witnesses, to include an investigation by the commission; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsections (2) and (3) of section 104.31, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

104.31 Political activities of state, county, and municipal officers and employees.--

(2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty.

HB 493 CS

2006
CS

Section 2. Subsection (8), paragraph (a) of subsection (9), paragraph (b) of subsection (12), and subsection (14) of section 112.313, Florida Statutes, are amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.--

(8) DISCLOSURE OR USE OF CERTAIN INFORMATION.--No current or former public officer, employee of an agency, or local government attorney shall disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(9) POSTEMPLOYMENT RESTRICTIONS; STANDARDS OF CONDUCT FOR LEGISLATORS AND LEGISLATIVE EMPLOYEES.--

(a)1. It is the intent of the Legislature to implement by statute the provisions of s. 8(e), Art. II of the State Constitution relating to legislators, statewide elected officers, appointed state officers, and designated public employees.

2. As used in this paragraph:

a. "Employee" means:

(I) Any person employed in the executive or legislative branch of government holding a position in the Senior Management Service as defined in s. 110.402 or any person holding a position in the Selected Exempt Service as defined in s. 110.602 or any person having authority over policy or procurement employed by the Department of the Lottery.

HB 493 CS

2006
CS

108 (II) The Auditor General, the director of the Office of
109 Program Policy Analysis and Government Accountability, the
110 Sergeant at Arms and Secretary of the Senate, and the Sergeant
111 at Arms and Clerk of the House of Representatives.

112 (III) The executive director of the Legislative Committee
113 on Intergovernmental Relations and the executive director and
114 deputy executive director of the Commission on Ethics.

115 (IV) An executive director, staff director, or deputy
116 staff director of each joint committee, standing committee, or
117 select committee of the Legislature; an executive director,
118 staff director, executive assistant, analyst, or attorney of the
119 Office of the President of the Senate, the Office of the Speaker
120 of the House of Representatives, the Senate Majority Party
121 Office, Senate Minority Party Office, House Majority Party
122 Office, or House Minority Party Office; or any person, hired on
123 a contractual basis, having the power normally conferred upon
124 such persons, by whatever title.

125 (V) The Chancellor and Vice Chancellors of the State
126 University System; the general counsel to the Board of Regents;
127 and the president, vice presidents, and deans of each state
128 university.

129 (VI) Any person, including an other-personal-services
130 employee, having the power normally conferred upon the positions
131 referenced in this sub-subparagraph.

132 b. "Appointed state officer" means any member of an
133 appointive board, commission, committee, council, or authority
134 of the executive or legislative branch of state government whose
135 powers, jurisdiction, and authority are not solely advisory and

HB 493 CS

2006
CS

include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relative to its internal operations.

c. "State agency" means an entity of the legislative, executive, or judicial branch of state government over which the Legislature exercises plenary budgetary and statutory control.

3. No member of the Legislature, appointed state officer, or statewide elected officer shall personally represent another person or entity for compensation before the government body or agency of which the individual was an officer or member for a period of 2 years following vacation of office. No member of the Legislature shall personally represent another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals or in settlement negotiations after the filing of a lawsuit.

4. No agency employee shall personally represent another person or entity for compensation before the agency with which he or she was employed for a period of 2 years following vacation of position, unless employed by another agency of state government.

5. Any person violating this paragraph shall be subject to the penalties provided in s. 112.317 and a civil penalty of an amount equal to the compensation which the person receives for the prohibited conduct.

6. This paragraph is not applicable to:

a. A person employed by the Legislature or other agency prior to July 1, 1989;

HB 493 CS

2006
CS

b. A person who was employed by the Legislature or other agency on July 1, 1989, whether or not the person was a defined employee on July 1, 1989;

c. A person who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994;

d. A person who has reached normal retirement age as defined in s. 121.021(29), and who has retired under the provisions of chapter 121 by July 1, 1991; or

e. Any appointed state officer whose term of office began before January 1, 1995, unless reappointed to that office on or after January 1, 1995.

7. This paragraph does not apply to an agency employee who was employed on July 1, 2001, in a Career Service System position that was transferred to the Selected Exempt Service System under chapter 2001-43, Laws of Florida.

(12) EXEMPTION.--The requirements of subsections (3) and (7) as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing person and full disclosure of the transaction or relationship by the appointee to the appointing person. In addition, no person

HB 493 CS

2006
CS

190 shall be held in violation of subsection (3) or subsection (7)
191 if:

192 (b) The business is awarded under a system of sealed,
193 competitive bidding to the lowest or best bidder and:

194 1. The official or the official's spouse or child has in
195 no way participated in the determination of the bid
196 specifications or the determination of the lowest or best
197 bidder;

198 2. The official or the official's spouse or child has in
199 no way used or attempted to use the official's influence to
200 persuade the agency or any personnel thereof to enter such a
201 contract other than by the mere submission of the bid; and

202 3. The official, prior to or at the time of the submission
203 of the bid, has filed a statement with the Commission on Ethics
204 ~~Department of State~~, if the official is a state officer or
205 employee, or with the supervisor of elections of the county in
206 which the agency has its principal office, if the official is an
207 officer or employee of a political subdivision, disclosing the
208 official's interest, or the interest of the official's spouse or
209 child, and the nature of the intended business.

210 (14) LOBBYING BY FORMER LOCAL OFFICERS; PROHIBITION.--A
211 person who has been elected to any county, municipal, special
212 district, or school district office may not personally represent
213 another person or entity for compensation before the government
214 ~~governing~~ body or agency of which the person was an officer for
215 a period of 2 years after vacating that office. For purposes of
216 this subsection:

HB 493 CS

2006
CS

217 (a) The "government body or agency" of a member of a board
218 of county commissioners consists of the commission, the chief
219 administrative officer or employee of the county, and their
220 immediate support staff.

221 (b) The "government body or agency" of any other county
222 elected officer is the office or department headed by that
223 officer, including all subordinate employees.

224 (c) The "government body or agency" of an elected
225 municipal officer consists of the governing body of the
226 municipality, the chief administrative officer or employee of
227 the municipality, and their immediate support staff.

228 (d) The "government body or agency" of an elected special
229 district officer is the special district.

230 (e) The "government body or agency" of an elected school
231 district officer is the school district.

232 Section 3. Present subsections (4), (5), and (6) of
233 section 112.3144, Florida Statutes, are renumbered as
234 subsections (5), (6), and (7), respectively, paragraph (g) of
235 present subsection (4) is amended, and a new subsection (4) is
236 added to that section, to read:

237 112.3144 Full and public disclosure of financial
238 interests.--

239 (4) (a) With respect to reporting, on forms prescribed
240 under this section, assets valued in excess of \$1,000 that the
241 reporting individual holds jointly with another person, the
242 amount reported shall be based on the reporting individual's
243 legal percentage of ownership in the property. However, assets
244 that are held jointly with right of survivorship must be

HB 493 CS

2006
CS

reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own a percentage of a partnership that is equal to the reporting individual's interest in the capital or equity of the partnership.

(b)1. With respect to reporting, on forms prescribed under this section, liabilities valued in excess of \$1,000 for which the reporting individual is jointly and severally liable, the amount reported shall be based on the reporting individual's percentage of liability rather than the total amount of the liability. However, liability for a debt that is secured by property owned by the reporting individual but that is held jointly with right of survivorship must be reported at 100 percent of the total amount owed.

2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in subparagraph 1.

~~(5)~~(4) Forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics. The commission shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(g) The notification requirements and fines of this subsection do not apply to candidates or to the first filing required of any person appointed to elective constitutional office or other position required to file full and public disclosure, unless the person's name is on the commission's

HB493 CS

2006
CS

notification list and the person received notification from the commission. The appointing official shall notify such newly appointed person of the obligation to file full and public disclosure by July 1. The notification requirements and fines of this subsection do not apply to the final filing provided for in subsection (6)~~(5)~~.

Section 4. Paragraph (c) of subsection (6) of section 112.3145, Florida Statutes, is amended to read:

112.3145 Disclosure of financial interests and clients represented before agencies.--

(6) Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections. The commission and each supervisor of elections shall give notice of disclosure deadlines and delinquencies and distribute forms in the following manner:

(c) Not later than 30 days after July 1 of each year, the commission and each supervisor of elections shall determine which persons required to file a statement of financial interests in their respective offices have failed to do so and shall send delinquency notices by certified mail, return receipt requested, to these ~~such~~ persons. Each notice shall state that a grace period is in effect until September 1 of the current year; that no investigative or disciplinary action based upon the delinquency will be taken by the agency head or commission if the statement is filed by September 1 of the current year; that, if the statement is not filed by September 1 of the current year, a fine of \$25 for each day late will be imposed, up to a

HB 493 CS

2006
CS

maximum penalty of \$1,500; for notices sent by a supervisor of elections, that he or she is required by law to notify the commission of the delinquency; and that, if upon the filing of a sworn complaint the commission finds that the person has failed to timely file the statement within 60 days after September 1 of the current year, such person will also be subject to the penalties provided in s. 112.317.

Section 5. Section 112.3147, Florida Statutes, is amended to read:

112.3147 Forms.--

~~(1)~~ All information required to be furnished by ss. 112.313, 112.3143, 112.3144, 112.3145, 112.3148, and 112.3149 and by s. 8, Art. II of the State Constitution shall be on forms prescribed by the Commission on Ethics.

~~(2)(a) With respect to reporting assets valued in excess of \$1,000 on forms prescribed pursuant to s. 112.3144 which the reporting individual holds jointly with another person, the amount reported shall be based on the reporting individual's legal percentage of ownership in the property, except that assets held jointly with the reporting individual's spouse shall be reported at 100 percent of the value of the asset. For purposes of this subsection, a reporting individual is deemed to own an interest in a partnership which corresponds to the reporting individual's interest in the capital or equity of the partnership.~~

~~(b)1. With respect to reporting liabilities valued in excess of \$1,000 on forms prescribed pursuant to s. 112.3144 for which the reporting individual is jointly and severally liable,~~

HB 493 CS

2006
CS

~~the amount reported shall be based upon the reporting individual's percentage of liability rather than the total amount of the liability, except, a joint and several liability with the reporting individual's spouse for a debt which relates to property owned by both as tenants by the entirety shall be reported at 100 percent of the total amount owed.~~

~~2. A separate section of the form shall be created to provide for the reporting of the amounts of joint and several liability of the reporting individual not otherwise reported in paragraph (a).~~

Section 6. Paragraph (d) of subsection (6) and subsection (8) of section 112.3148, Florida Statutes, are amended to read:

112.3148 Reporting and prohibited receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.--

(6)

(d) No later than July 1 of each year, each reporting individual or procurement employee shall file a statement listing each gift having a value in excess of \$100 received by the reporting individual or procurement employee, either directly or indirectly, from a governmental entity or a direct-support organization specifically authorized by law to support a governmental entity. The statement shall list the name of the person providing the gift, a description of the gift, the date or dates on which the gift was given, and the value of the total gifts given during the calendar year for which the report is made. The reporting individual or procurement employee shall attach to the ~~such~~ statement any report received by him or her

HB493 CS

2006
CS

in accordance with paragraph (c), which report shall become a public record when filed with the statement of the reporting individual or procurement employee. The reporting individual or procurement employee may explain any differences between the report of the reporting individual or procurement employee and the attached reports. The annual report filed by a reporting individual shall be filed with the financial disclosure statement required by either s. 8, Art. II of the State Constitution or s. 112.3145, as applicable to the reporting individual. The annual report filed by a procurement employee shall be filed with the Commission on Ethics. The report filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the report shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

(8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics not later than ~~on~~ the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).

HB 493 CS

2006
CS

3. Gifts otherwise required to be disclosed by this section.

(b) The statement shall include:

1. A description of the gift, the monetary value of the gift, the name and address of the person making the gift, and the dates thereof. If any of these facts, other than the gift description, are unknown or not applicable, the report shall so state.

2. A copy of any receipt for such gift provided to the reporting individual or procurement employee by the donor.

(c) The statement may include an explanation of any differences between the reporting individual's or procurement employee's statement and the receipt provided by the donor.

(d) The reporting individual's or procurement employee's statement shall be sworn to by such person as being a true, accurate, and total listing of all such gifts.

(e) Statements must be filed not later than 5 p.m. on the due date. However, any statement that is postmarked by the United States Postal Service by midnight on the due date is deemed to have been filed in a timely manner, and a certificate of mailing obtained from and dated by the United States Postal Service at the time of the mailing, or a receipt from an established courier company that bears a date on or before the due date, constitutes proof of mailing in a timely manner.

(f)~~(e)~~ If a reporting individual or procurement employee has not received any gifts described in paragraph (a) during a calendar quarter, he or she is not required to file a statement under this subsection for that calendar quarter.

HB 493 CS

2006
CS

412 Section 7. Subsection (6) of section 112.3149, Florida
413 Statutes, is amended to read:
414 112.3149 Solicitation and disclosure of honoraria.--
415 (6) A reporting individual or procurement employee who
416 receives payment or provision of expenses related to any
417 honorarium event from a person who is prohibited by subsection
418 (4) from paying an honorarium to a reporting individual or
419 procurement employee shall publicly disclose on an annual
420 statement the name, address, and affiliation of the person
421 paying or providing the expenses; the amount of the honorarium
422 expenses; the date of the honorarium event; a description of the
423 expenses paid or provided on each day of the honorarium event;
424 and the total value of the expenses provided to the reporting
425 individual or procurement employee in connection with the
426 honorarium event. The annual statement of honorarium expenses
427 shall be filed by July 1 of each year for those ~~such~~ expenses
428 received during the previous calendar year. The reporting
429 individual or procurement employee shall attach to the annual
430 statement a copy of each statement received by him or her in
431 accordance with subsection (5) regarding honorarium expenses
432 paid or provided during the calendar year for which the annual
433 statement is filed. The ~~Such~~ attached statement shall become a
434 public record upon the filing of the annual report. The annual
435 statement of a reporting individual shall be filed with the
436 financial disclosure statement required by either s. 8, Art. II
437 of the State Constitution or s. 112.3145, as applicable to the
438 reporting individual. The annual statement of a procurement
439 employee shall be filed with the Commission on Ethics. The

Page 16 of 28

CODING: Words stricken are deletions; words underlined are additions.

hb0493-02-c2

HB 493 CS

2006
CS

statement filed by a reporting individual or procurement
employee who left office or employment during the calendar year
covered by the statement shall be filed by July 1 of the year
after leaving office or employment at the same location as his
or her final financial disclosure statement or, in the case of a
former procurement employee, with the Commission on Ethics.

Section 8. Subsections (1), (2), (6), (7), and (8) of
section 112.317, Florida Statutes, are amended to read:

112.317 Penalties.--

(1) Violation of any provision of this part, including,
but not limited to, any failure to file any disclosures required
by this part or violation of any standard of conduct imposed by
this part, or violation of any provision of s. 8, Art. II of the
State Constitution, in addition to any criminal penalty or other
civil penalty involved, shall, under ~~pursuant to~~ applicable
constitutional and statutory procedures, constitute grounds for,
and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.
2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month
for no more than 12 months.
6. A civil penalty not to exceed \$10,000.
7. Restitution of any pecuniary benefits received because
of the violation committed. The commission may recommend that

HB 493 CS

2006
CS

the restitution penalty be paid to the agency of which the
public officer was a member or to the General Revenue Fund.

(b) In the case of an employee or a person designated as a
public officer by this part who otherwise would be deemed to be
an employee:

1. Dismissal from employment.
2. Suspension from employment for not more than 90 days
without pay.
3. Demotion.
4. Reduction in salary level.
5. Forfeiture of no more than one-third salary per month
for no more than 12 months.
6. A civil penalty not to exceed \$10,000.
7. Restitution of any pecuniary benefits received because
of the violation committed. The commission may recommend that
the restitution penalty be paid to the agency by which the
public employee was employed, or of which the officer was deemed
to be an employee, or to the General Revenue Fund.
8. Public censure and reprimand.

(c) In the case of a candidate who violates the provisions
of this part or s. 8(a) and (i), Art. II of the State
Constitution:

1. Disqualification from being on the ballot.
2. Public censure.
3. Reprimand.
4. A civil penalty not to exceed \$10,000.

(d) In the case of a former public officer or employee who
has violated a provision applicable to former officers or

HB 493 CS

2006
CS

employees or whose violation occurred before the ~~prior to such~~
officer's or employee's leaving public office or employment:

1. Public censure and reprimand.

2. A civil penalty not to exceed \$10,000.

3. Restitution of any pecuniary benefits received because
of the violation committed. The commission may recommend that
the restitution penalty be paid to the agency by which the
public employee was employed, or of which the officer was deemed
to be an employee, or to the General Revenue Fund.

(2) In any case in which the commission finds a violation
of this part or of s. 8, Art. II of the State Constitution and
the proper disciplinary official or body under s. 112.324
imposes ~~recommends~~ a civil penalty or restitution penalty, the
Attorney General shall bring a civil action to recover such
penalty. No defense may be raised in the civil action to enforce
the civil penalty or order of restitution that could have been
raised by judicial review of the administrative findings and
recommendations of the commission by certiorari to the district
court of appeal. The Attorney General shall collect any costs,
attorney's fees, expert witness fees, or other costs of
collection incurred in bringing the action.

~~(6) Any person who willfully discloses, or permits to be~~
~~disclosed, his or her intention to file a complaint, the~~
~~existence or contents of a complaint which has been filed with~~
~~the commission, or any document, action, or proceeding in~~
~~connection with a confidential preliminary investigation of the~~
~~commission, before such complaint, document, action, or~~
~~proceeding becomes a public record as provided herein commits a~~

HB 493 CS

2006
CS

523 ~~misdemeanor of the first degree, punishable as provided in s.~~
524 ~~775.082 or s. 775.083.~~

525 (6)~~(7)~~ In any case in which the commission finds probable
526 cause to believe that a complainant has committed perjury in
527 regard to any document filed with, or any testimony given
528 before, the commission, it shall refer such evidence to the
529 appropriate law enforcement agency for prosecution and taxation
530 of costs.

531 (7)~~(8)~~ In any case in which the commission determines that
532 a person has filed a complaint against a public officer or
533 employee with a malicious intent to injure the reputation of
534 such officer or employee by filing the complaint with knowledge
535 that the complaint contains one or more false allegations or
536 with reckless disregard for whether the complaint contains false
537 allegations of fact material to a violation of this part, the
538 complainant shall be liable for costs plus reasonable attorney's
539 fees incurred in the defense of the person complained against,
540 including the costs and reasonable attorney's fees incurred in
541 proving entitlement to and the amount of costs and fees. If the
542 complainant fails to pay such costs and fees voluntarily within
543 30 days following such finding by the commission, the commission
544 shall forward such information to the Department of Legal
545 Affairs, which shall bring a civil action in a court of
546 competent jurisdiction to recover the amount of such costs and
547 fees awarded by the commission.

548 Section 9. Section 112.3185, Florida Statutes, is amended
549 to read:

HB 493 CS

2006
CS

550 112.3185 Additional standards for state agency employees

551 ~~Contractual services.--~~

552 (1) For the purposes of this section:

553 (a) "Contractual services" shall be defined as set forth
554 in chapter 287.

555 (b) "Agency" means any state officer, department, board,
556 commission, or council of the executive or judicial branch of
557 state government and includes the Public Service Commission.

558 (2) No agency employee who participates through decision,
559 approval, disapproval, recommendation, preparation of any part
560 of a purchase request, influencing the content of any
561 specification or procurement standard, rendering of advice,
562 investigation, or auditing or in any other advisory capacity in
563 the procurement of contractual services shall become or be,
564 while an agency employee, the employee of a person contracting
565 with the agency by whom the employee is employed.

566 (3) No agency employee shall, after retirement or
567 termination, have or hold any employment or contractual
568 relationship with any business entity other than an agency in
569 connection with any contract in which the agency employee
570 participated personally and substantially through decision,
571 approval, disapproval, recommendation, rendering of advice, or
572 investigation while an officer or employee. When the agency
573 employee's position is eliminated and his or her duties are
574 performed by the business entity, this subsection does not
575 prohibit his or her employment or contractual relationship with
576 the business entity if the employee's participation in the
577 contract was limited to recommendation, rendering of advice, or

HB 493 CS

2006
CS

investigation and if the agency head determines that the best interests of the state will be served thereby and provides prior written approval for the particular employee.

(4) No agency employee shall, within 2 years after retirement or termination, have or hold any employment or contractual relationship with any business entity other than an agency in connection with any contract for contractual services which was within his or her responsibility while an employee. If the agency employee's position is eliminated and his or her duties are performed by the business entity, the provisions of this subsection may be waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby.

(5) The sum of money paid to a former agency employee during the first year after the cessation of his or her responsibilities, by the agency with whom he or she was employed, for contractual services provided to the agency, shall not exceed the annual salary received on the date of cessation of his or her responsibilities. ~~The provisions of This~~ subsection may be waived by the agency head for a particular contract if the agency head determines that such waiver will result in significant time or cost savings for the state.

(6) No agency employee acting in an official capacity shall directly or indirectly procure contractual services for his or her own agency from any business entity of which a relative is an officer, partner, director, or proprietor or in

HB 493 CS

2006
CS

which ~~the such~~ officer or employee or his or her spouse or child, or any combination of them, has a material interest.

(7) A violation of any provision of this section is punishable in accordance with s. 112.317.

(8) This section is not applicable to any employee of the Public Service Commission who was so employed on or before December 31, 1994.

Section 10. Subsection (1) of section 112.321, Florida Statutes, is amended to read:

112.321 Membership, terms; travel expenses; staff.--

(1) The commission shall be composed of nine members. Five of these members shall be appointed by the Governor, no more than three of whom shall be from the same political party, subject to confirmation by the Senate. One member appointed by the Governor shall be a former city or county official and may be a former member of a local planning or zoning board which has only advisory duties. Two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President of the Senate. Neither the Speaker of the House of Representatives nor the President of the Senate shall appoint more than one member from the same political party. Of the nine members of the commission, no more than five members shall be from the same political party at any one time. No member may hold any public employment. An individual who qualifies as a lobbyist pursuant to s. 11.045 or s. 112.3215 or pursuant to any local government charter or ordinance may not serve as a member of the commission, except that this prohibition does not apply to an individual who is a member of

HB 493 CS

2006
CS

633 the commission on October 1, 2006, until the expiration of his
634 or her current term. A member of the commission may not lobby
635 any state or local governmental entity as provided in s. 11.045
636 or s. 112.3215 or as provided by any local government charter or
637 ordinance, except that this prohibition does not apply to an
638 individual who is a member of the commission on October 1, 2006,
639 until the expiration of his or her current term. All members
640 shall serve 2-year terms. No member shall serve more than two
641 full terms in succession. Any member of the commission may be
642 removed for cause by majority vote of the Governor, the
643 President of the Senate, the Speaker of the House of
644 Representatives, and the Chief Justice of the Supreme Court.

645 Section 11. Paragraph (e) of subsection (5) of section
646 112.3215, Florida Statutes, as amended by chapter 2005-359, Laws
647 of Florida, is amended to read:

648 112.3215 Lobbying before the executive branch or the
649 Constitution Revision Commission; registration and reporting;
650 investigation by commission.--

651 (5)

652 (e) The commission shall provide by rule the grounds for
653 waiving a fine, the procedures ~~a procedure~~ by which a lobbying
654 firm that fails to timely file a report shall be notified and
655 assessed fines, and the procedure for appealing the fines. The
656 rule shall provide for the following:

657 1. Upon determining that the report is late, the person
658 designated to review the timeliness of reports shall immediately
659 notify the lobbying firm as to the failure to timely file the
660 report and that a fine is being assessed for each late day. The

HB 493 CS

2006
CS

661 fine shall be \$50 per day per report for each late day up to a
662 maximum of \$5,000 per late report.

663 2. Upon receipt of the report, the person designated to
664 review the timeliness of reports shall determine the amount of
665 the fine due based upon the earliest of the following:

666 a. When a report is actually received by the lobbyist
667 registration and reporting office.

668 b. When the report is postmarked.

669 c. When the certificate of mailing is dated.

670 d. When the receipt from an established courier company is
671 dated.

672 3. Such fine shall be paid within 30 days after the notice
673 of payment due is transmitted by the Lobbyist Registration
674 Office, unless appeal is made to the commission. The moneys
675 shall be deposited into the Executive Branch Lobby Registration
676 Trust Fund.

677 4. A fine shall not be assessed against a lobbying firm
678 the first time any reports for which the lobbying firm is
679 responsible are not timely filed. However, to receive the one-
680 time fine waiver, all reports for which the lobbying firm is
681 responsible must be filed within 30 days after the notice that
682 any reports have not been timely filed is transmitted by the
683 Lobbyist Registration Office. A fine shall be assessed for any
684 subsequent late-filed reports.

685 5. Any lobbying firm may appeal or dispute a fine, based
686 upon unusual circumstances surrounding the failure to file on
687 the designated due date, and may request and shall be entitled
688 to a hearing before the commission, which shall have the

HB 493 CS

2006
CS

authority to waive the fine in whole or in part for good cause shown. Any such request shall be made within 30 days after the notice of payment due is transmitted by the Lobbyist Registration Office. In such case, the lobbying firm shall, within the 30-day period, notify the person designated to review the timeliness of reports in writing of his or her intention to bring the matter before the commission.

6. The person designated to review the timeliness of reports shall notify the commission of the failure of a lobbying firm to file a report after notice or of the failure of a lobbying firm to pay the fine imposed. All lobbyist registrations for lobbyists who are partners, owners, officers, or employees of a lobbying firm that fails to timely pay a fine are automatically suspended until the fine is paid or waived, and the commission shall promptly notify all affected principals of any suspension or reinstatement.

7. Notwithstanding any provision of chapter 120, any fine imposed under this subsection that is not waived by final order of the commission and that remains unpaid more than 60 days after the notice of payment due or more than 60 days after the commission renders a final order on the lobbying firm's appeal shall be collected by the Department of Financial Services as a claim, debt, or other obligation owed to the state, and the department may assign the collection of such fine to a collection agent as provided in s. 17.20.

Section 12. Subsection (4) of section 112.322, Florida Statutes, is amended to read:

112.322 Duties and powers of commission.--

HB 493 CS

2006
CS

(4) The commission has the power to subpoena, audit, and investigate. The commission may subpoena witnesses and compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items relevant to the performance of the duties of the commission or to the exercise of its powers. The commission may delegate to its investigators the authority to administer oaths and affirmations. The commission may delegate the authority to issue subpoenas to its chair, and may authorize its employees to serve any subpoena issued under this section. In the case of a refusal to obey a subpoena issued to any person, the commission may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt. Witnesses shall be paid mileage and witnesses fees as authorized for witnesses in civil cases, except that a witness who is required to travel outside the county of his or her residence to testify is entitled to per diem and travel expenses at the same rate provided for state employees under s. 112.061, to be paid after the witness appears.

Section 13. Subsections (3) and (4) of section 914.21, Florida Statutes, are amended to read:

914.21 Definitions.--As used in ss. 914.22-914.24, the term:

HB 493 CS

2006
CS

744 (3) "Official investigation" means any investigation
745 instituted by a law enforcement agency or prosecuting officer of
746 the state or a political subdivision of the state or the
747 Commission on Ethics.

748 (4) "Official proceeding" means:

749 (a) A proceeding before a judge or court or a grand jury;

750 (b) A proceeding before the Legislature; ~~or~~

751 (c) A proceeding before a federal agency which is
752 authorized by law; or-

753 (d) A proceeding before the Commission on Ethics.

754 Section 14. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 743 CS

Agricultural Usage Sales and Use Tax Exemptions

SPONSOR(S): Bowen and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Agriculture Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Kaiser</u>	<u>Reese</u>
2) <u>Finance & Tax Committee</u>	<u>6 Y, 0 N</u>	<u>Noriega</u>	<u>Diez-Arguelles</u>
3) <u>Fiscal Council</u>	<u></u>	<u>Noriega</u> <i>TA</i>	<u>Kelly</u> <i>ck</i>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

The Revenue Estimating Conference estimates that the provisions of this bill will result in a negative fiscal impact of \$1.8 million to state government and \$0.5 million to local governments in FY 2006-07, and of \$2.8 million to state government and \$0.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, and provides that farmers may use tax exempt diesel fuel in equipment other than farm vehicles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.0501, F.S., imposes a 6 percent sales tax on the total cost price of diesel fuel purchased for consumption, use, or storage by a trade or business. Section 212.0501(3), F.S., provides an exemption for diesel fuel used for residential purposes or on account of agricultural purposes as defined in s. 212.08(5), F.S., or when purchased or stored for resale. This exemption does not cover diesel fuel used in farm equipment or on a farm to process or produce farm products.

Section 212.0501(5), F.S., provides a sales tax exemption for liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised.

According to the U.S. Department of Agriculture (USDA), the overall fuel bills for farmers increased by 47 percent between 2003 and 2005. The USDA projects that farmers' energy bills will increase by another \$1.7 billion in 2006.¹ The following table reflects the exemption status of electricity for neighboring states in the southern United States:

State	Full Exemption	Partial Exemption
Louisiana	X	
South Carolina	X	
Tennessee	X*	
Georgia	X**	
Alabama	X***	
Mississippi		X****

*Effective 2007

**Irrigation systems only

***Heating poultry houses

****1.5 percent

Proposed Changes

This bill provides a sales tax exemption for electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, which means that it is taxable.

The bill expands the sales tax exemption for diesel fuel. The exemption applies when the diesel fuel is used in any tractor, vehicle, or other equipment that is used exclusively on a farm or for processing

¹ www.tdo.com, Friday, February 24, 2006, "As energy bills climb, farmers' profits falter," by Pamela Brogan.

farm products on the farm. The exemption does not apply to diesel fuel used in any licensed motor vehicle operated on the public highways in the state.

C. SECTION DIRECTORY:

- Section 1. Amends s. 212.0501(3), F.S., by expanding the meaning of diesel fuel exempt from sales tax.
- Section 2. Amends s. 212.08(5)(e), F.S., by providing an exemption for electricity used directly and exclusively for production or processing of agricultural products on a farm, as long as it is separately metered.
- Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	<u>2006-07</u>	<u>2007-08</u>
General Revenue	(1.8m)	(2.8m)
State Trust	(Insignificant)	(Insignificant)
Total	<u>(1.8m)</u>	<u>(2.8m)</u>

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	<u>2006-07</u>	<u>2007-08</u>
Revenue Sharing	(0.1m)	(0.1m)
Local Gov't. Half Cent	(0.2m)	(0.3m)
Local Option	(0.2m)	(0.3m)
Total Local Impact	<u>(0.5m)</u>	<u>(0.7m)</u>

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Agricultural producers will save money by not having to pay a sales tax on electricity used directly and exclusively for the production or processing of agricultural products on a farm, as long as it is separately metered.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Agriculture Committee adopted one amendment to the bill. This amendment clarified that the sales tax exemption only applies to electricity used directly and exclusively for the production or processing of agricultural products on a farm.

The bill was then reported favorably with a committee substitute, and this analysis reflects the changes contained in the amendment adopted by the Agriculture Committee.

HB 743

2006
CS

CHAMBER ACTION

The Agriculture Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agricultural usage sales and use tax exemptions; amending s. 212.0501, F.S.; excluding from application of the sales and use tax diesel fuel used in certain farming vehicles or for certain farming purposes; amending s. 212.08, F.S.; exempting from the sales and use tax electricity used for specified agricultural purposes; providing application; providing a conclusive presumption of taxable use under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.--

(3) For purposes of this section, "consumption, use, or storage by a trade or business" does not include those uses of

HB 743

2006
CS

diesel fuel specifically exempt on account of residential purposes, or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state ~~on account of agricultural purposes as defined in s. 212.08(5), or the~~ purchase or storage of diesel fuel held for resale.

Section 2. Paragraph (e) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(e)1. Gas used for certain agricultural purposes.--Butane gas, propane gas, natural gas, and all other forms of liquefied petroleum gases are exempt from the tax imposed by this chapter if used in any tractor, vehicle, or other farm equipment which is used exclusively on a farm or for processing farm products on the farm and no part of which gas is used in any vehicle or equipment driven or operated on the public highways of this state. This restriction does not apply to the movement of farm vehicles or farm equipment between farms. The transporting of bees by water and the operating of equipment used in the apiary of a beekeeper is also deemed an exempt use.

HB 743

2006
CS

51 2. Electricity used for certain agricultural
52 purposes.--Electricity used directly and exclusively for
53 production or processing of agricultural products on a farm is
54 exempt from the tax imposed by this chapter. This exemption
55 applies only if the electricity used for the exempt purposes is
56 separately metered. If the electricity is not separately
57 metered, it is conclusively presumed that some portion of the
58 electricity is used for a nonexempt purpose, and all of the
59 electricity used for such purposes is taxable.

60 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 971

Broward County

SPONSOR(S): Sobel

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR			
1) <u>Local Government Council</u>	<u>6 Y, 2 N</u>	<u>Smith</u>	<u>Hamby</u>
2) <u>Elder & Long-Term Care Committee</u>	<u>7 Y, 1 N</u>	<u>Walsh</u>	<u>Walsh</u>
3) <u>Fiscal Council</u>	<u></u>	<u>Monroe</u>	<u>Kelly</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 971 creates an independent special district (district) for the purpose of providing funding for services for seniors in Broward County. The boundaries of the district are coterminous with the boundaries of Broward County. The district is authorized to levy an ad valorem tax not to exceed .5 mills on taxable property within the district subject to referendum approval by voters of the district. The referendum required to approve the ad valorem tax levy must be held in conjunction with the primary election held on September 5, 2006.

The bill provides for the district to be governed by the Broward County Council for Services for Seniors consisting of 11 members: the executive director of the area agency on aging of Broward County; the Broward County director of human services; one member of the Broward County board of county commissioners for a 2-year term; two nonvoting members of the Broward County legislative delegation for the county appointed by the delegation chair for a 2-year term; two representatives of the Broward League of Cities appointed by the President of the League of Cities for a 2-year term; and four members appointed by the Governor for a 4-year term, initially staggered, with reappointment for one additional term permitted, and who meet certain additional qualifications.

The bill sets forth powers, duties, and the financing and budgeting requirements of the district.

The bill provides that the district must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports.

According to the Economic Impact Statement, anticipated funding from the levy of ad valorem taxes at the maximum allowed millage rate is approximately \$60 million for FY 06-07. However, based on the latest taxable value estimates for 2006 by the Revenue Estimating Conference, the district could collect up to \$80 million.

The bill is effective upon its approval by a majority vote of those qualified electors of Broward County voting in a referendum.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - This bill creates a new independent special district for the purpose of providing services for seniors in Broward County.

Ensure lower taxes - The bill authorizes the district to levy an ad valorem tax not to exceed .5 mill on taxable property within the district, pursuant to a referendum.

Empower families - The bill permits the district to provide and maintain preventive, developmental, treatment, and rehabilitative services in Broward County that the council determines are needed for the general welfare of the county's seniors.¹ In addition, the council may consult and coordinate with other agencies serving seniors to prevent overlapping of services.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Special Districts Generally

Independent special districts are limited forms of government created to perform specialized functions. Special districts have no home rule power; rather, they only have the powers expressly provided by, or which can be reasonably implied from, the authority legislatively provided in their charter.

Chapter 189, F.S., is the "Uniform Special District Accountability Act" (Act). The Act provides that it is the specific intent of the Legislature that independent special districts may only be created by legislative authorization as provided in the Act.

Section 189.404(2), F.S., requires submission of a statement to the Legislature documenting the purpose of the proposed district, the authority of the proposed district, and an explanation of why the district is the best alternative. In addition, the section requires submission of a resolution or official statement issued by the appropriate local governing body in which the proposed district is located affirming that the creation of the proposed district is consistent with approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

Section 189.404(5), F.S., requires the charter of any newly created special district to contain a reference to the status of the special district as dependent or independent. The charters of independent districts must address and include certain provisions, including geographical boundaries, taxing authority, bond authority, and Board selection procedures. Section 189.404(2)(a), F.S., prohibits special laws which create independent districts that do not, at a minimum, conform to the minimum requirements in s. 189.404(3), F.S.

Section 189.404, F.S., also prohibits special acts creating independent special districts that are exempt from general law requirements regarding:

- General requirements and procedures for elections (s. 189.405, F.S.);
- Bond referenda requirements (s. 189.408, F.S.);
- Bond issuance reporting requirements (s. 189.4085, F.S.);
- Public facilities reports (s. 189.415, F.S.); and

¹ HB 971 s. 1(3)(a)(1) (2006).

- Notice, meetings, and other required reports and audits (ss. 189.417 & 189.418, F.S.).

In addition to these extensive requirements for local bills creating independent special districts, other criteria mandated by the Florida Constitution must be fulfilled including notice requirements applicable to all local bills.

Effect of Proposed Changes

Creation of Independent Special District in Broward County

HB 971 creates an independent special district for the purpose of providing funding for services for seniors in Broward County.

The bill includes definitions of “senior”² to clarify that the district provides a distinct type of service. The boundaries of the district must be coterminous with the boundaries of Broward County.

The bill authorizes the district to levy an ad valorem tax not to exceed .5 mill on taxable property within the district subject to referendum approval by voters of the district. The referendum required to approve the ad valorem tax levy must be held in conjunction with the primary election held on September 5, 2006.

The bill is effective upon its approval by a majority vote of those qualified electors of Broward County voting in a referendum.

Governing Board Members and Elections

The governing board of the district is the “Broward County Council for Services for Seniors” (council). The council must consist of 11 members:

- the executive director of the area agency on aging of Broward County, or his or her designee who is a director of senior programs, as a permanent position;
- the Broward County Director of Human Services or his or her designee who is a director of elderly services, as a permanent position;
- one member of the Broward County Board of County Commissioners for a 2-year term;
- two nonvoting members of the Broward County legislative delegation appointed by the delegation chair for a 2-year term;
- two representatives of the Broward League of Cities for a 2-year term; and
- four members appointed by the Governor for 4-year terms, initially staggered, with reappointment for one additional term permitted, and meeting these additional qualifications –
 - these members must, to the greatest extent possible, represent the cultural diversity of Broward County's population;
 - one of these members must be a caretaker for a senior and 60 years of age or older;
 - these members must have been residents of Broward County for the previous 24-month period; and
 - the County must provide three recommended names for each vacancy, determined by category, and the Governor must make a selection within a 45-day period or request a new list of candidates.

The Governor may remove a member for cause or upon the written petition of the Broward County Board of County Commissioners. If any of the members of the council required to be appointed by the Governor resign, die, or are removed from office, the vacancy is filled by appointment by the Governor, using the same method as the original appointment, and such appointment to fill a vacancy shall be for the unexpired term of the person who resigns, dies, or is removed from office.

² “Senior” means a person who is at least 60 years of age. HB 971 at lines 58-59.

Members of the council shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses consistent with s. 112.061, F.S.

General Powers

The district council is given a number of permissive powers:

1. provide and maintain in the county such preventive, developmental, treatment, and rehabilitative services for seniors as the council determines are needed for their general welfare;
2. provide any other services as the council determines are needed for the general welfare of the county's seniors;
3. allocate and provide funds for other agencies in the county which are operated for the benefit of seniors;
4. collect information and statistical data and conduct research that will be helpful to the council and the county in deciding the needs of the county's seniors;
5. consult and coordinate with other agencies serving seniors to prevent overlapping of services;
6. seek grants from state, federal, and local agencies and accept donations from public and private sources;
7. lease or buy real estate, equipment, and personal property and construct buildings as needed to execute district powers and functions; such purchases must be paid for with cash on hand or secured by funds deposited in financial institutions; grant no authority to issue bonds; and
8. employ, pay, and provide benefits for required district personnel.

District Duties

The district council is also charged with a number of duties:

1. elect a chair and a vice chair from among its members, and elect other officers as deemed necessary by the council;
2. identify and assess the needs of the county's seniors and submit to the Broward County Commissioners a written description of:
 - o the activities, services, and opportunities that will be provided to seniors;
 - o the anticipated schedule for providing those activities, services, and opportunities;
 - o the manner in which seniors will be served, including a description of arrangements and agreements which will be made with community organizations, state and local educational agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations;
 - o the special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected and ailing seniors;
 - o the manner in which the council will seek and provide funding for unmet needs; and
 - o the strategy that will be used for interagency coordination to maximize existing human and fiscal resources;
3. provide training and orientation to all new council members;
4. make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's operation; and
5. provide an annual written report, due January 1 of each year, to the Broward County Commissioners, which includes:
 - o information on the effectiveness of activities, services, and programs offered by the council, including cost-effectiveness;
 - o a detailed anticipated continuation budget and a list of all sources of requested funding, both public and private;
 - o procedures used for early identification of at-risk seniors who need additional or continued services and methods for ensuring receipt of those services;

- a description of the degree to which the council's objectives and activities are consistent with the goals of this section;
- detailed information of the various programs, services, and activities available to, and the degree to which they have been successfully used by seniors; and
- information on those programs, services, and activities that should be eliminated, those which should be continued, and those that should be added to the basic format of the council.

The council must also maintain minutes of each meeting, including a record of all votes cast, and make them available to any interested person.

Fiscal Matters and Millage Rates

The bill provides a number of financial and budgeting parameters for the districts:

- The fiscal year of the district is the same as that of Broward County.
- The council must prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund.
- The council must also compute a proposed millage rate within the voter-approved cap necessary to fund the tentative budget and comply with the provisions of s. 200.065, F.S., relating to the method of fixing millage, and fix the final millage rate by resolution of the council.
- The adopted budget and final millage rate are then certified and delivered to the Broward County Commissioners within 15 days following the adoption by the council of the final budget and millage rate pursuant to ch. 200, F.S. The millage rate, adopted by resolution of the council, necessary to be applied to raise the funds budgeted for district operations and expenditures must be included in each certified budget.
- The millage rate may not exceed 0.5 mills of assessed valuation of all properties subject to ad valorem county taxes within Broward County.
- After the district budget is certified and delivered to the Broward County Commissioners, it may not be changed or modified by the Broward County Commissioners or any other authority.
- All taxes collected under this section shall be paid directly to the council by the Broward County Revenue Collection Division.
- All moneys received by the council must be deposited in qualified public depositories, as defined in s. 280.02, F.S., with separate and distinguishable accounts established specifically for the council and may only be withdrawn by checks signed by the council chair and countersigned by one other member of the council or by a chief executive officer authorized by the council.
- The chair and the other member of the council or chief executive officer who signs its checks must each file a surety bond in the sum of at least \$1,000 for each \$1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expenses of the council. No other council members have to give bond or other security.
- District funds may only be expended by check, except expenditures from a petty cash account not exceeding \$100. All expenditures from petty cash must be recorded. Council funds other than petty cash may not be spent unless first budgeted for and approved by the council.
- The district must timely prepare and file a quarterly financial report which includes: for the quarter --- total council expenditures and receipts; a statement of the funds on hand, invested, or deposited; and total council administrative costs.
- After or during the first year of operation of the council, the Broward County Commissioners, at its option, may fund in whole or in part the council budget from its own funds.

District Compliance with Other Statutory Requirements

The bill requires that the district created under this act must comply with all other statutory requirements of general application which relate to the filing of any financial reports or compliance reports required under part III of ch. 218, F.S., or any other report or documentation required by law, including the reporting requirements of ss. 189.415, 189.417, and 189.418, F.S.

Referendum

The bill takes effect upon approval by a majority vote of those qualified electors of Broward County voting in a referendum to be conducted by the Broward County Supervisor of Elections in conjunction with the next primary election held on September 5, 2006, in accordance with the provisions of law relating to elections currently in force. The bill also provides a ballot statement.

C. SECTION DIRECTORY:

Section 1: Provides for the creation, governing body, powers, duties, and functions of an independent special district to provide funding for services for seniors in Broward County.

Section 2: Provides for a referendum.

Section 3: Provides that the act shall take effect upon becoming a law, except for otherwise provided.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 31, 2005

WHERE? *Sun-Sentinel*, Fort Lauderdale, Broward County, Boca Raton, Palm Beach County, and Miami, Miami Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

IF YES, WHEN? September 5, 2006

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 189.404(2)(e), F.S., provides as follows:

(2) SPECIAL ACTS PROHIBITED.--Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application which:

(e) Create an independent special district for which a statement has not been submitted to the Legislature that documents the following:

1. The purpose of the proposed district;

2. The authority of the proposed district;
3. An explanation of why the district is the best alternative; and
4. A resolution or official statement of the governing body or an appropriate administrator of the local jurisdiction within which the proposed district is located stating that the creation of the proposed district is consistent with the approved local government plans of the local governing body and that the local government has no objection to the creation of the proposed district.

By letter to the Honorable Allan Bense, Speaker of the House of Representatives, Mr. Ben Graber, Mayor and Commissioner of District 3, Broward County, stated in part, "[T]he Broward County Board of County Commissioners is in support of the legislation. This local option legislation has been included in the Commission's Legislative Program for the 2006 Legislative Session." Mr. Graber states that "one of the fastest growing populations in Broward are elders 85 years of age and older. As our population continues to live longer and wants to 'age in place,' greater levels of service delivery are required in order to accommodate multiple needs. We feel strongly that the voters should be given the choice to provide for a dedicated funding source that will enhance services in our local communities."

B. RULE-MAKING AUTHORITY:

This bill requires the district council to make and adopt bylaws and rules, not inconsistent with federal or state laws or county ordinances, for the council's guidance, operation, governance, and maintenance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Fiscal Comments

According to the Economic Impact Statement, it is estimated that the Broward County Council for Services for Seniors will be eligible to receive approximately \$4,000,000 in federal and foundation grants, for each year following the implementation of the funding.

Other Comments

HB 1501 (2005 Legislative Session), relating to Broward County, creating the Broward Council for Services to Seniors and Adults with Developmental Disabilities, died in the House Finance & Tax on 05/06/2005.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

HB 971

2006

1 A bill to be entitled

2 An act relating to Broward County; creating the Broward

3 County Council for Services for Seniors; creating an

4 independent special district to provide funding for

5 services for seniors; requiring approval by a majority

6 vote of electors to annually levy ad valorem taxes not to

7 exceed a certain maximum; creating a governing board for

8 the district; specifying criteria for membership of the

9 governing board; providing terms of office; specifying the

10 powers and functions of the council; requiring the council

11 to elect a chair, vice chair, and officers, to identify

12 and assess the needs of seniors, to provide training and

13 orientation to new members of the council, to make and

14 adopt bylaws and rules for the council's operation and

15 governance, and to provide an annual report to the Broward

16 County Board of County Commissioners; requiring the

17 council to maintain minutes of each meeting and to serve

18 without compensation; requiring the council to prepare a

19 tentative annual budget and to compute a millage rate to

20 fund the tentative budget; requiring that all tax moneys

21 collected be paid directly to the council by the Broward

22 County Tax Collector and deposited in qualified public

23 depositories; specifying expenditures of funds; requiring

24 the council to prepare and file a financial report to the

25 Broward County Board of County Commissioners; providing

26 that the district may be amended or dissolved by a special

27 act of the Legislature; authorizing the Broward County

28 Board of County Commissioners to fund the budget of the

HB 971

2006

council from its own funds after or during the council's first year of operation; requiring the district to comply with statutory requirements related to the filing of a financial or compliance report; authorizing the district to seek grants and accept donations from public and private sources; providing legislative intent with respect to the use of funds collected by the council; requiring a referendum; providing a ballot statement; providing an effective date.

WHEREAS, the Legislature has determined that it would serve the public interest to establish an independent special district to provide services to seniors within Broward County, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Services for seniors; independent special district; council; powers, duties, and functions.--

(1) There is hereby created an independent special district, as defined in sections 189.403 and 200.001, Florida Statutes, to provide funding for services for seniors throughout Broward County in accordance with this act. The boundaries of such district shall be coterminous with the boundaries of Broward County. The district created pursuant to this act shall levy and fix millage as provided in section 200.065, Florida Statutes. Once the millage is approved by the electorate, the district is not required to seek approval of the electorate in

HB 971

2006

future years to levy the previously approved millage. For purposes of this section, the term "senior" means a person who is at least 60 years of age.

(2) The governing board of the district shall be the Broward County Council for Services for Seniors. The council shall consist of 11 members, including the Executive Director of the Area Agency on Aging of Broward County or his or her designee who is a director of senior programs; the Broward County Director of Human Services or his or her designee who is a director of senior services; one member of the Broward County Board of County Commissioners; two nonvoting members of the Broward County Legislative Delegation appointed by the delegation chair; and two representatives of the Broward League of Cities appointed by the President of the League of Cities. The Executive Director of the Area Agency on Aging of Broward County or his or her designee and the Broward County Director of Human Services or his or her designee are permanent positions. The members appointed from the Broward County Board of County Commissioners, the Broward County Legislative Delegation, and the Broward League of Cities shall be appointed to 2-year terms each. The other four members shall be appointed by the Governor and shall represent, to the greatest extent possible, the cultural diversity of Broward County's population. At least one of the gubernatorial appointees must be an individual who is both a caretaker for a senior and 60 years of age or older. Recommendations for these members shall be provided by the Broward County Board of County Commissioners. Three names shall be submitted for each vacancy, determined by category. The

HB971

2006

85 gubernatorial appointees shall be appointed to 4-year terms and
86 may be reappointed for one additional term of office. The
87 Governor shall make a selection within a 45-day period or
88 request a new list of candidates. All members appointed by the
89 Governor must have been residents of Broward County for the
90 previous 24 months. The length of the terms of the initial
91 appointees shall be adjusted to stagger the terms. The Governor
92 may remove a member for cause or upon the written petition of
93 the Broward County Board of County Commissioners. If any of the
94 members of the council appointed by the Governor resign, die, or
95 are removed from office, the vacancy shall be filled by
96 appointment by the Governor using the same method as the
97 original appointment, and such appointment to fill a vacancy
98 shall be for the unexpired term of the member who resigns, dies,
99 or is removed from office.

100 (3) (a) The Broward County Council for Services for Seniors
101 may:

102 1. Provide and maintain in the county the preventive,
103 developmental, treatment, and rehabilitative services for
104 seniors the council determines are needed for the general
105 welfare of seniors.

106 2. Provide any other services the council determines are
107 needed for the general welfare of seniors in the county.

108 3. Allocate and provide funds for other agencies in the
109 county that are operated for the benefit of seniors.

110 4. Collect information and statistical data and conduct
111 research and assessments that will be helpful to the council and
112 the county in deciding the needs of seniors in the county.

HB 971

2006

5. Consult and coordinate with other agencies dedicated to the welfare of seniors to the end that the overlapping of services will be prevented.

6. Seek grants from state, federal, and local agencies and accept donations from public and private sources.

7. Lease or buy real estate, equipment, and personal property and construct buildings as needed to execute the foregoing powers and functions, except that such purchases or construction may only be paid for with cash on hand or secured by funds deposited in financial institutions. This subparagraph does not authorize the district to issue bonds of any nature, and the district does not have the power to require the imposition of any bond by the governing body of the county.

8. Employ, pay, and provide benefits for any part-time or full-time personnel needed to execute the foregoing powers and functions.

(b) The Broward County Council for Services for Seniors shall:

1. Immediately after the members are appointed, elect a chair and vice chair from among its members and elect other officers as deemed necessary by the council.

2. As soon as possible after the members are appointed and officers are elected, identify and assess the needs of seniors in the county and submit to the Broward County Board of County Commissioners a written description of:

a. The activities, services, and opportunities that will be provided to seniors.

b. The anticipated schedule for providing those

HB971

2006

activities, services, and opportunities.

c. The manner in which seniors will be served, including a description of arrangements and agreements that will be made with community organizations, state and local agencies, federal agencies, public assistance agencies, the court system, guardianship groups, and other applicable public and private agencies and organizations.

d. The special outreach efforts that will be undertaken to provide services to at-risk, abused, or neglected and ailing seniors.

e. The manner in which the council will seek and provide funding for unmet needs.

f. The strategy that will be used for interagency coordination to maximize existing human and fiscal resources.

3. Provide training and orientation to all new members sufficient to allow them to perform their duties.

4. Make and adopt bylaws and rules for the council's guidance, operation, governance, and maintenance not inconsistent with federal or state laws or county ordinances.

5. Provide an annual written report, to be presented no later than January 1, to the Broward County Board of County Commissioners. The annual report must contain, but need not be limited to:

a. Information on the effectiveness of activities, services, and programs offered by the council, including cost-effectiveness.

b. A detailed anticipated budget for continuation of activities, services, and programs offered by the council and a

HB 971

2006

list of all sources of requested funding, both public and private.

c. Procedures used for early identification of at-risk seniors who need additional or continued services and methods for ensuring that the additional or continued services are provided.

d. A description of the degree to which the council's objectives and activities are consistent with the goals of this section.

e. Detailed data on the various programs, services, and activities available to seniors.

f. Information on programs, services, and activities that should be eliminated; programs, services, and activities that should be continued; and programs, services, and activities that should be added to the basic format of the council.

(c) The council shall maintain minutes of each meeting, including a record of all votes cast, and shall make such minutes available to any interested person.

(d) Members of the council shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses consistent with section 112.061, Florida Statutes.

(4) (a) The district shall maintain the same fiscal year as Broward County.

(b) On or before July 1 of each year, the council shall prepare a tentative annual written budget of the district's expected income and expenditures, including a contingency fund. The council shall, in addition, compute a proposed millage rate

HB971

2006

197 within the voter-approved cap necessary to fund the tentative
 198 budget and, prior to adopting a final budget, comply with
 199 section 200.065, Florida Statutes, relating to the method of
 200 fixing millage, and fix the final millage rate by resolution of
 201 the council. The adopted budget and final millage rate must be
 202 certified and delivered to the Broward County Board of County
 203 Commissioners within 15 days following the council's adoption of
 204 the final budget and millage rate under chapter 200, Florida
 205 Statutes. Included in each certified budget shall be the millage
 206 rate, adopted by resolution of the council, necessary to be
 207 applied to raise the funds budgeted for district operations and
 208 expenditures. District millage may not exceed 0.5 mills of
 209 assessed valuation of all properties within Broward County that
 210 are subject to ad valorem county taxes.

211 (c) After the budget of the district is certified and
 212 delivered to the Broward County Board of County Commissioners,
 213 the budget may not be changed or modified by the Broward County
 214 Board of County Commissioners or any other authority.

215 (d) All taxes collected under this section, as soon after
 216 collection as is reasonably practicable, shall be paid directly
 217 to the council by the Broward County Revenue Collection
 218 Division.

219 1. All moneys received by the council shall be deposited
 220 in qualified public depositories, as defined in section 280.02,
 221 Florida Statutes, with separate and distinguishable accounts
 222 established specifically for the council and may be withdrawn
 223 only by checks signed by the chair of the council and
 224 countersigned by one other member of the council or by a chief

HB 971

2006

executive officer authorized by the council.

2. Upon entering the duties of office, the chair and the other member of the council or chief executive officer who signs its checks shall each file a surety bond in the sum of at least \$1,000 for each \$1 million or portion thereof of the council's annual budget, which bond shall be conditioned upon the faithful discharge of the duties of his or her office. The premium on such bond may be paid by the district as part of the expenses of the council. Other members of the council may not be required to give bond or other security.

3. Funds of the district may only be expended by check, except expenditures from a petty cash account, which account may not at any time exceed \$100. All expenditures from petty cash must be recorded on the books and records of the council. Funds of the council, except expenditures from petty cash, may not be expended without prior approval of the council, in addition to the budgeting thereof.

(e) Within 10 days, exclusive of weekends and legal holidays, after the expiration of each quarter-annual period, the council shall prepare and file with the Broward County Board of County Commissioners a financial report that includes:

1. The total expenditures of the council for the quarter-annual period.

2. The total receipts of the council during the quarter-annual period.

3. A statement of the funds the council has on hand, has invested, or has deposited with qualified public depositories at the end of the quarter-annual period.

HB 971

2006

4. The total administrative costs of the council for the quarter-annual period.

(5) The district created under this act may be amended or dissolved by a special act of the Legislature.

(6) After or during the first year of operation of the council, the Broward County Board of County Commissioners, at its option, may fund in whole or in part the budget of the council from its own funds.

(7) The district created under this act shall comply with all other statutory requirements of general application that relate to the filing of any financial reports or compliancy reports required under part III of chapter 218, Florida Statutes, or any other report or documentation required by law, including the requirements of sections 189.415, 189.417, and 189.418, Florida Statutes.

Section 2. Referendum.--The Broward County Board of County Commissioners is directed to call and the Supervisor of Elections of Broward County shall conduct a special referendum election to be held in conjunction with the primary election held on September 5, 2006, to carry out the purposes and intent of this act and to do all things necessary to implement and fund the Broward County Council for Services for Seniors and the independent special district created hereby in accordance with the terms of this act and the laws pertaining to elections. The item shall appear on the ballot as follows:

Creating the Council for Services for Seniors and authorization of taxation

HB 971

2006

281
282 An independent special district known as the "Broward County
283 Council for Services for Seniors" is created to fund the
284 improvement and availability of services for seniors by levying
285 each year an ad valorem tax not to exceed 0.5 mills for services
286 for seniors.

287
288 Yes _____

289 No _____

290

291 Section 3. This act shall take effect only upon approval
292 by a majority vote of those qualified electors of Broward County
293 voting in a referendum election to be called by the Broward
294 County Board of County Commissioners and held in conjunction
295 with the primary election held on September 5, 2006, in
296 accordance with the provisions of law relating to elections
297 currently in force, except that this section and section 2
298 shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 995

Agency Inspectors General

SPONSOR(S): Bean

TIED BILLS:

IDEN./SIM. BILLS: SB 1632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Brown</u>	<u>Williamson</u>
2) <u>Fiscal Council</u>	<u></u>	<u>Dobbs</u> <i>MD</i>	<u>Kelly</u> <i>ck</i>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill amends agency inspector general provisions to create an investigatory challenge process. Entities under investigation by an agency inspector general are granted hearing rights during the investigatory process in order to challenge or rebut findings being made by the inspector general. In addition, the target of the investigation is entitled to present a report which must be attached to the inspector general's report.

The bill will have an indeterminate fiscal impact due to administrative costs of holding impartial hearings for entities wishing to challenge or rebut inspector general findings.

The bill provides an effective date of October 1, 2006 for section 1 except for paragraph 20.055(6)(b), F.S.. Section 1 for paragraph 20.055(6)(b), F.S., becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates an additional hearing process in the investigatory processes of agency inspectors general.

Safeguard individual liberty – The bill provides a hearing process for individuals under investigation by an agency.

B. EFFECT OF PROPOSED CHANGES:

Agency Inspectors General

Current law establishes an Office of Inspector General in each state agency to provide a central point for coordination of and responsibility for activities that promote accountability, integrity, and efficiency in government.¹ Each inspector general, in carrying out his or her auditing duties and responsibilities, must review and evaluate internal controls necessary to ensure the fiscal accountability of the agency; conduct financial, compliance, electronic data processing, and performance audits of the agency; and prepare audit reports of his or her findings.² In carrying out his or her investigative duties and responsibilities, the inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses.³ Agency investigations may involve processes and procedures of an agency, or may involve the actions of specific employees, vendors, or other individuals or entities.

Inspector General Working Materials

Audit workpapers and reports of the inspector general are public records less any confidential and exempt information.⁴ However, when a complaint has been received by the inspector general, the name or identity of the individual filing the complaint must not be disclosed without the individual's written consent, unless disclosure is unavoidable during the course of an audit or investigation.⁵

Agency Hearings

The Florida Administrative Procedure Act (APA)⁶ creates rights for administrative hearings for entities substantially affected by final agency actions. "Agency action" means "the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request [of a petition to initiate rulemaking]."⁷

Section 120.62, F.S., "Agency Investigations," provides that every person responding to an agency request or demand for written information or an oral statement is entitled to a transcript or recording of such oral statement at no more than cost. The section also provides that any person compelled to appear, or who appears voluntarily, before an agency is entitled to legal counsel or other qualified representatives.

Proposed Changes

The bill amends s. 20.055, F.S., to allow hearings challenging an inspector general's findings. Specifically, the bill requires each agency to:

¹ Section 20.055(2), F.S.

² Section 20.055(5), F.S.

³ Section 20.055(6), F.S.

⁴ Section 20.055(5)(b), F.S.

⁵ *Id.*

⁶ Codified in Chapter 120, F.S.

⁷ Section 120.52(2), F.S.

Provide a meaningful opportunity, including the right to an impartial hearing, to challenge findings... contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public.... ”

The challenger’s response must be attached to the inspector general’s final report, and delivered to any party requesting such report.

The bill also directs the Chief Inspector General in the Executive Office of the Governor⁸ to develop procedures “by which all inspectors general will fully implement” this requirement. The initial procedures must be completed within 120 days after the effective date of the law, but no later than September 30, 2006.

C. SECTION DIRECTORY:

Section 1 amends s. 20.055, F.S., to create a right to hearing for individuals under investigation by an agency inspector general.

Section 2 provides an effective date of upon becoming a law, except for the procedures to be developed by the Executive Office of the Governor, which take effect on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The cost of this change will depend upon the determination of what constitutes an “impartial hearing”.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The counties will be required to send return receipt letters to delinquent filers at a cost of \$1.85 per letter.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not currently provide any rulemaking authority, but see "Rulemaking concerns" in "Drafting Issues or Other Comments," below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Inspector General Autonomy

Section 20.055(3)(b), F.S., states that each inspector general "shall not be subject to supervision by any other employee of the state agency." Section 20.055(3)(d), F.S., states that the "agency head shall not prevent or prohibit the inspector general... from initiating, carrying out, or completing any audit or investigation." The purpose of these statutes is to ensure that employees of the agency, including the agency head, may not interfere in the operation of an inspector general investigation. This bill may create an opportunity for any employee, or any other entity related to the agency and subject to possible investigation, to hinder or delay inspector general obligations under s. 20.055, F.S., by repeatedly requesting hearings on each finding made by an inspector general during his or her investigation. Section 20.055(5)(d), F.S., provides a 'draft and response' procedure for audits of operational units inside the agency. It may be advisable to attempt to create a similar procedure for other investigations, rather than the current "impartial hearing" legislation.

Standing and APA Issues

The bill is unclear as to the individuals or entities granted hearing rights to challenge inspector general findings. The bill merely provides that each state agency shall "ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings..." The legislation does not identify to whom this "meaningful opportunity" is granted. The bill also is unclear whether the "impartial hearing" is an administrative hearing under the APA. If so, the matter of who has a right to a hearing may need to be more clearly addressed in order to identify which parties have standing and a right to a hearing under ss. 120.569 or 120.57, F.S. If the report is not a final agency action, it is unclear what type of "impartial hearing" is required by this legislation, or what manner of uniform rules apply to such hearings (see also "Rulemaking concerns," below).

Public Records concerns

It is not clear, in the bill, to what extent the challenging party is entitled to review documents relating to the investigation that would otherwise be unavailable under the public records exemption for certain audit workpapers and reports.⁹ The legislation may need to be amended to address the records access issue in order to clarify the challenger's right to review documents in light of the "impartial hearing" requirement of the bill.

Rulemaking concerns

The bill provides that the Chief Inspector General, part of the Executive Office of the Governor, shall create "specific procedures by which all inspectors general will implement" the hearing process

⁹ Section 20.055(5)(b), F.S.

described in the bill. Such procedures may require development through the administrative rulemaking process described in s. 120.54, F.S., in order to be valid assertions of agency action.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

•

HB 995

2006

1 A bill to be entitled

2 An act relating to agency inspectors general; amending s.
3 20.055, F.S.; deleting the requirement that investigations
4 and inquiries by inspectors general be free of perceived
5 impairments to their independence; requiring provision of
6 opportunity to challenge an inspector general's report;
7 requiring development of procedures to ensure compliance
8 with requirements applicable to inspector general
9 investigations; prescribing applicability; providing
10 effective dates.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (6) of section 20.055, Florida
15 Statutes, is amended to read:

16 20.055 Agency inspectors general.--

17 (6) (a) In carrying out the investigative duties and
18 responsibilities specified in this section, each inspector
19 general shall initiate, conduct, supervise, and coordinate
20 investigations designed to detect, deter, prevent, and eradicate
21 fraud, waste, mismanagement, misconduct, and other abuses in
22 state government. For these purposes, each state agency shall:

23 1.(a) Receive complaints and coordinate all activities of
24 the agency as required by the Whistle-blower's Act pursuant to
25 ss. 112.3187-112.31895.

26 2.(b) Receive and consider the complaints which do not
27 meet the criteria for an investigation under the Whistle-
28 blower's Act and conduct, supervise, or coordinate such

HB 995

2006

inquiries, investigations, or reviews as the inspector general deems appropriate.

3.(e) Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, whenever the inspector general has reasonable grounds to believe there has been a violation of criminal law.

4.(d) Conduct investigations and other inquiries free of actual ~~or perceived~~ impairment to the independence of the inspector general or the inspector general's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

5.(e) Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189.

6. Ensure a meaningful opportunity, including the right to an impartial hearing, to challenge findings, conclusions, and recommendations contained in a report resulting from an inquiry, investigation, audit, or review before it is finalized and made public in a written response to the findings, conclusions, and recommendations of the inspector general's final report, which response must be attached to the inspector general's final report and delivered to any party requesting such report at the same time the report is delivered.

(b) Specific procedures by which all inspectors general will fully implement this subsection shall be developed by the Chief Inspector General in the Executive Office of the Governor. Development of initial procedures must be completed within 120

HB 995

2006

57 | days after this paragraph becomes a law, but no later than
58 | September 30, 2006.

59 | Section 2. This act, except for this section and paragraph
60 | 20.055(6)(b), Florida Statutes, created in section 1 which shall
61 | take effect upon this act becoming a law, shall take effect
62 | October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 995

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Fiscal Council

Representative(s) Bean offered the following:

Amendment (with directory and title amendments)

Remove line(s) 35-52 and insert:

4. ~~(d)~~ Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This shall include freedom from any interference with investigations and timely access to records and other sources of information.

5. ~~(e)~~ Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head, except for whistle-blower's investigations, which shall be conducted and reported pursuant to s. 112.3189.

6. Submit preliminary findings and recommendations of any inquiry, investigation, audit, or review conducted by the inspector general, except for whistle-blower's investigations, to any agency, corporation, or any individual who is the subject of the investigation, inquiry, audit, or review or the work performed by such agency, corporation, or individual is addressed in any of the findings or recommendations so such may

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 respond within 20 working days to any adverse findings or
23 recommendations. Any such response shall be included in the
24 final report and delivered to any party requesting such report.

25 7. Ensure a meaningful opportunity including the right to
26 an impartial hearing, to challenge findings, conclusions, and
27 recommendations contained in a report resulting from an inquiry,
28 investigation, audit or review following the issuance of the
29 final report. This right to an impartial hearing shall be
30 available to any agency, corporation, or any individual who is
31 the subject of the resulting report, or the work performed by
32 such agency, corporation, or individual is addressed in any of
33 the findings or recommendations.
34

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 CS

Florida Retirement System

SPONSOR(S): Barreiro

TIED BILLS:

IDEN./SIM. BILLS: SB 2182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>DiVagno</u>	<u>Hamby</u>
3) <u>Fiscal Council</u>	<u></u>	<u>Dobbs</u> <i>MD</i>	<u>Kelly</u> <i>CK</i>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Medical examiners and certain forensic employees were added to the Special Risk Class in 2005. This bill permits these medical examiners and forensic employees to purchase additional retirement credit to upgrade their previous service in the Florida Retirement System to Special Risk Class service. The bill requires the contributions for upgrading previous service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest. The bill permits an employer to purchase upgraded credit on behalf of a member. The bill provides legislative findings and declares that it fulfills an important state interest.

The bill as written creates an unfunded liability to the Florida Retirement System which, when amortized, is estimated to cost \$327,000 annually. The unfunded liability can be addressed by amending the bill to add 0.01 percent to the employer contribution rate for the Special Risk Class.

This bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the members of the Special Risk Class who may upgrade previous service to Special Risk Class service.

B. EFFECT OF PROPOSED CHANGES:

Background on the Florida Retirement System

Chapter 121, Florida Statutes, is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.¹

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.² The FRS also has participating employees of 151 cities and 186 independent special districts who have elected to join the system.³

The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.⁴ Members of the FRS defined benefit plan belong to one of five membership classes:

Regular Class ⁵	570,888 members	88.00%
Special Risk Class ⁶	68,466 members	10.59%
Special Risk Administrative Support Class ⁷	80 members	0.01%
Senior Management Service Class ⁸	6,823 members	1.10%
Elected Officers Class ⁹	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in chapter 121, Florida Statutes.¹⁰

Expansion of the Special Risk Class and Upgraded Service

The Special Risk Class of the FRS was created to recognize that certain employees, because of the nature of the work they perform,¹¹ may need to retire at an earlier age with less service than other types of employees.¹² The only employees originally in the Special Risk Class were law enforcement

¹ Fla. Stat. § 121.025 (2005).

² Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at <http://www.frs.state.fl.us/> (last visited Jan. 11, 2006).

³ Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at <http://www.frs.state.fl.us/> (last visited Jan. 11, 2006).

⁴ Fla. Dep't of Mgmt. Serv., Fla. Div. of Ret. at <http://www.frs.state.fl.us/> (last visited Jan. 11, 2006).

⁵ Fla. Stat. § 121.021(12) (2005).

⁶ Fla. Stat. § 121.0515 (2005).

⁷ Fla. Stat. § 121.0515(7) (2005).

⁸ Fla. Stat. § 121.055 (2005).

⁹ Fla. Stat. § 121.052 (2005).

¹⁰ See, e.g., Fla. Stat. 121.055(3)(a)1. (2005).

¹¹ Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

¹² Fla. Stat. § 121.0515(1) (2005) (work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity).

officers, correctional officers, and firefighters.¹³ Starting in 1999, however, the Legislature began expanding the Special Risk Class:

1999	Emergency Medical Technicians and Paramedics ¹⁴
2000	Community-Based Correctional Probation Officers ¹⁵ Twenty-four types of employees of correctional or forensic facilities or institutions ¹⁶
2001	Youth Custody Officers ¹⁷
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline ¹⁸

Another legislative trend that has followed the expansion of the Special Risk Class is allowing members who have previous service in another class of the Florida Retirement System, usually the Regular Class, to purchase additional retirement credit to upgrade the previous service to Special Risk Class service. In 2001, the Legislature permitted emergency medical technicians and paramedics to purchase credit for upgraded service.¹⁹ In 2002, the Legislature allowed members whose responsibilities included fire prevention or fire fighting training to purchase credit for upgraded service.²⁰

Effect of Bill on Upgraded Service for Medical Examiners and Certain Forensic Employees

This bill permits medical examiners and certain forensic employees who were added to the Special Risk Class in 2005 to purchase additional retirement credit to upgrade previous service in the Florida Retirement System to Special Risk Class service.²¹ The bill requires the contributions for upgrading previous service to Special Risk Class service to be equal to the difference in the contributions paid and the contribution rate in effect for the period being claimed, plus interest at a rate of 6.5 percent a year, compounded annually until the date of payment. The bill permits an employer to purchase upgraded credit on behalf of a member. The bill provides legislative findings and declares that it fulfills an important state interest.

Constitutional Requirements for Retirement or Pension System Increases

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after

¹³ Ch. 78-308, Laws of Fla.

¹⁴ Ch. 99-392, Laws of Fla., § 23.

¹⁵ Ch. 2000-169, Laws of Fla. § 29.

¹⁶ Ch. 2000-169, Laws of Fla. § 29. (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).

¹⁷ Ch. 2001-125, Laws of Fla., § 43.

¹⁸ Ch. 2005-167, Laws of Fla. § 1; codified as Fla. Stat. § 121.0515(2)(h) (2005) (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). See also Int'l Ass'n for Identification at <http://www.theiai.org/> (last visited Mar. 27, 2006).

¹⁹ Ch. 2001-235, Laws of Fla., § 6.

²⁰ Ch. 2002-273, Laws of Fla., § 16.

²¹ Fla. HB 1165 (2006) (to the extent of the percentages of the member's average final compensation provided in section 121.091(1)(a)2, Florida Statutes).

January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.²²

The bill as written does not address the unfunded liability identified in the actuarial study. The actuarial study of the costs to upgrade the previous service of medical examiners and qualifying forensic employees states:

The projected increase in actuarial liabilities is \$26.4 million offset by the projected cost the members would pay for the eligible service under this proposal of \$22.1 million, which results in the net additional unfunded liabilities of \$4.3 million.²³

The actuarial study further notes that if this unfunded actuarial liability is to be paid for through employer contributions, it will require an overall increase of 0.01 percent in the employer contribution rates for the Special Risk Class.²⁴

C. SECTION DIRECTORY:

- Section 1: Amends section 121.0515, Florida Statutes, to permit medical examiners and certain forensic employees to purchase upgraded service in the Special Risk Class.
- Section 2: Provides legislative findings and declares that the bill fulfills an important state interest.
- Section 3: Provides that this bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²² Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

²³ Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

²⁴ Milliman, Inc., Actuarial Study, Service Upgrade for Specified Forensic Workers (Mar. 17, 2006), at p. 4.

D. FISCAL COMMENTS:

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

The cost proposed by this bill to be paid by the affected members/employees to upgrade the service is not sufficient to pay for this kind of benefit enhancement. Any costs not covered by this pricing structure would be shifted to the system and could result in increased contribution rates for all special risk employers. HB 1165 does not provide a funding source for the additional costs of such an improvement of retirement benefits.²⁵

If the bill were amended to increase the Special Risk Class employer contribution rate to address the unfunded liability, then there would be an estimated annual cost to the state of \$91,000 and \$236,000 to local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article X, Section 14

Benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. This bill does not appear to provide sufficient funding for the proposed benefits increase.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Calculation or Funding

To address the expected unfunded liability and its potential constitutional issues, the sponsor may wish to consider amending the bill to provide a funding source.

Drafting Issue: Limited Timeframe

Because the costs of this bill increase for both the employee and the Florida Retirement System for each year in which an employee delays purchase, the sponsor may wish to consider limiting the timeframe in which an employee may avail himself or herself of its provisions.

²⁵ Fla. Dep't of Mgmt. Serv., HB 1165 (2006) Substantive Bill Analysis (Mar. 20, 2006) (on file with dep't).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with committee substitute:

- Amendment 1 provided legislative findings and declared that the bill fulfilled an important state interest.

HB 1165

2006
CS

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending s. 121.0515, F.S.; authorizing certain members to purchase additional retirement credit to upgrade prior service to Special Risk Class service; providing for the calculation of contributions for such service upgrade; authorizing the employer to purchase such additional credit for the member; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (9) of section 121.0515, Florida Statutes, to read:

121.0515 Special risk membership.--

(9) CREDIT FOR UPGRADED SERVICE.--

(c) Any member of the Special Risk Class who has earned creditable service in another membership class of the Florida Retirement System as a medical examiner or as an employee of a

HB 1165

2006
CS

24 law enforcement agency in a forensic discipline as described in
25 paragraph (2)(h), which service is within the purview of the
26 Special Risk Class, may purchase additional retirement credit to
27 upgrade such service to Special Risk Class service, to the
28 extent of the percentages of the member's average final
29 compensation provided in s. 121.091(1)(a)2. Contributions for
30 upgrading such service to Special Risk Class credit under this
31 subsection shall be equal to the difference in the contributions
32 paid and the Special Risk Class contribution rate as a
33 percentage of gross salary in effect for the period being
34 claimed, plus interest thereon at the rate of 6.5 percent a
35 year, compounded annually until the date of payment. This
36 service credit may be purchased by the employer on behalf of the
37 member.

38 Section 2. The Legislature finds that a proper and
39 legitimate state purpose is served when employees and retirees
40 of the state and its political subdivisions, and the dependents,
41 survivors, and beneficiaries of such employees and retirees, are
42 extended additional protections afforded by governmental
43 retirement systems. These persons must be provided benefits that
44 are fair and adequate and that are managed, administered, and
45 funded in a sound actuarial manner, as required by Section 14,
46 Article X of the State Constitution and part VII of chapter 112,
47 Florida Statutes. Therefore, the Legislature hereby determines
48 and declares that this act fulfills an important state interest.

49 Section 3. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 1165 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Fiscal Council

Representative(s) Barreiro offered the following:

Amendment (with directory and title amendments)

Remove line(s) 38 and insert:

Section 2. Effective July 1, 2006, in order to fund the
benefits provided under section 1 of this act, the contribution
rate that applies to the Special Risk Class of the Florida
Retirement System shall be increased by 0.01 percentage points.
This increase shall be in addition to all other changes to such
contribution rates which may be enacted into law to take effect
on that date. The division of Statutory Revision is directed to
adjust accordingly the contribution rates set forth in s.
121.071, F.S.

Section 3. There is appropriated \$100,000 from the General
Revenue Fund on a recurring basis to Administered Funds to fund
the state costs associated with the retirement benefits granted
by this act, effective July 1, 2006.

Section 4. The Legislature finds that a proper and

000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 ===== D I R E C T O R Y A M E N D M E N T =====

23 Remove line(s) and insert:

24

25

26 ===== T I T L E A M E N D M E N T =====

27 Remove line(s) and insert:

28

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1283 CS Innovation Incentives
SPONSOR(S): Attkisson and others
TIED BILLS: HB 1285 **IDEN./SIM. BILLS:** SB 2728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>6 Y, 4 N, w/CS</u>	<u>Olmedillo</u>	<u>Carlson</u>
2) <u>Fiscal Council</u>	<u></u>	<u>Gordon</u> <i>AS</i>	<u>Kelly</u> <i>Ch</i>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill creates within the Office of Tourism, Trade, and Economic Development (OTTED) the Innovation Incentive Program for qualified innovation businesses (Program). The purpose of the Program is to improve the state's ability to compete effectively in attracting science-based research projects of significant scale and world class excellence and innovation business projects to this state.

The bill establishes the Innovation Incentive Account within the Economic Development Trust Fund (EDTF). The bill appropriates \$250,000,000 from nonrecurring general revenue to OTTED for the fiscal year 2006-2007.

The bill requires Enterprise Florida, Inc. (EFI) to evaluate applications for incentive awards and make recommendations to OTTED, which in turn, shall make recommendations for approval to the Governor. The bill requires the Governor to consult with the Legislature and receive approval prior to releasing funds.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates the Innovation Program for qualified innovation businesses and appropriates \$250,000,000 to the Innovation Incentive Account.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Quick Action Closing Fund

The 1999 Legislature created the Quick Action Closing Fund (QACF) (s. 288.1088, F.S.) within the Office of Tourism, Trade, and Economic Development for the purpose of helping Florida compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities.² Enterprise Florida, Inc., evaluates proposals for the use of the Quick Action Closing Fund, and makes recommendations to OTTED.³

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions the project must meet to obtain the incentive funds.

The Governor must consult with the Legislature before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S. This requires notice to the chair and vice chair of the Legislative Budget Commission.

Once approved by the Governor, OTTED enters into a performance contract with the business and establishes the conditions for payment of moneys from the QACF.

Enterprise Florida, Inc. shall validate the contractor's performance and provide a report regarding such performance to the Governor, the President of the Senate and the Speaker of the House, within 6 months after completion of the contract.

The Governor may, in an emergency or special circumstance, and in consultation with the Legislature pursuant to s. 216.177, reallocate unencumbered funds appropriated to the QACF to supplement statutorily created economic development programs and operations.

Effect of Proposed Changes

Background

In a press release dated January 30, 2006, Governor Bush launched new economic development initiatives to bolster the state's efforts to diversify and build Florida's Innovation Economy. To coincide with this initiative, the Governor is recommending a \$630 million investment in the 2006-2007 budget for programs that will generate the innovation needed to create the industries of the future; this includes \$250 million to create the Florida Innovation Incentive Fund to enable Florida to take advantage of "once-in-a-lifetime opportunities" and big, statewide priorities that will yield a significant return for the tax payer in the long run.

² The 1996 Legislature created the Office of Tourism, Trade, and Economic Development (OTTED) in the Executive Office of the Governor. OTTED is responsible for promoting economic development, tourism, and international trade. OTTED oversees the activities public-private partnerships, including Enterprise Florida, Inc. (s. 14.2015, F.S.).

³ In 1992, the Legislature created Enterprise Florida, Inc. (EFI), to assist in the coordination of the state's economic development efforts and to develop a strategic plan for economic development for Florida (s. 288.901, F.S.).

Appropriations

The bill appropriates \$250,000,000 from nonrecurring general revenue to OTTED for the fiscal year 2006-2007. The bill provides that any unexpended balance from this appropriation shall be carried forward at the end of each fiscal year until the 2010-2011 fiscal year, at which time, any obligated funds for qualified projects that are not yet disbursed shall remain to be used for the purposes set out in the bill. Any unobligated funds for qualified projects that are not yet disbursed, shall revert to the unallocated general revenue fund at the end of the 2010-2011 fiscal year.

Innovation Incentive Program

The bill creates within OTTED the Innovation Incentive Program for qualified innovation businesses and establishes the Innovation Incentive Account within the Economic Development Trust Fund. The purpose of the Program is to ensure the availability of sufficient resources to respond expeditiously to extraordinary economic opportunities and compete effectively for high value research and development and business innovation projects.

Economic Development Trust Fund

Funds allocated to EDTF shall be invested pursuant to s. 17.57 and any interest earned on such investments shall be transferred from EDTF to the General Revenue Fund.⁴

Definitions

The bill provides the following definitions:

- "Average wage" means the statewide average wage in the private sector or the average of all private-sector wages and salaries in the county or in the standard metropolitan area in which the project is located as determined by the Agency for Workforce Innovation.
- "Cumulative investment" means the total private investment in buildings and equipment made by an applicant under a project approved pursuant to this section.
- "Director" means the director of the Office of Tourism, Trade, and Economic Development.
- "Innovation business" means a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate.
- "Fiscal year" means the state fiscal year.
- "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs.
- "Match" means funding from local sources, public or private, which will be paid to the applicant and which is equal to 100 percent of the award. Eligible match funding may include any tax abatement granted to the applicant under s. 196.1995 or the appraised market value of land, buildings, infrastructure, or equipment conveyed or provided at a discount to the applicant. Complete documentation of match payment or other conveyance must be presented to and verified by the office before transfer of state funds to an applicant. An applicant may not provide, directly or indirectly, more than 5 percent of match funding in any fiscal year. The sources of such funding may not include, directly or indirectly, state funds appropriated from the General Revenue Fund or any state trust fund, excluding tax revenues shared with local governments pursuant to law.
- "Office" means the Office of Tourism, Trade, and Economic Development.
- "Project" means the location to or expansion in this state by an innovation business or research and development applicant approved for an award pursuant to this section.
- "Research and development" means basic and applied research in the sciences or engineering, as well as the design, development, and testing, of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, nontechnological activities, or technical services.

⁴ s. 17.57, F.S., provides procedures to deposit and invest state money.

- "Research and development facility" means a facility that is predominately engaged in research and development activities. For purposes of this paragraph, the term "predominately" means at least 51 percent of the time.

Application

An innovation business or research and development entity shall submit an application to Enterprise Florida, Inc. (EFI), prior to deciding to locate or expand in Florida, which shall include:

- The applicants' Federal Employer Identification Number (FEIN), unemployment account number, state sales tax registration number;⁵
- The proposed location of a project within Florida;
- A description of the type of business activity, product, or research and development undertaken by the applicant, including North American Industry Classification System codes;
- The applicant's projected investment in project;
- The total investment from all sources in the project;
- The anticipated number of net new full-time equivalent jobs created as of December 31st of each year in Florida and the average wage of such jobs;
- The total number of full-time equivalent employees currently employed by the applicant in Florida, if applicable;
- The anticipated project commencement date;
- An explanation regarding the significance of the award as a factor to induce business to locate or expand in Florida; and
- An estimate of proportion of revenues from project that will be generated outside Florida, if applicable.

Eligibility

To be eligible, an applicant must establish the following to the satisfaction of EFI and OTTED:

1. The proposed jobs by the project will pay at least 130% of the average private sector wage in the anticipated location area or statewide for the project. OTTED may waive this requirement at its discretion or at the request of EFI, only if:
 - The project is located in a brownfield area, rural city, rural county, or in an Enterprise Zone,
 - The merits of the project or specific circumstances in the community in relationship to the project warrant such action;
 - If Enterprise Florida, Inc. recommends such waiver, it must be in writing and explain a specific justification supporting the waiver; and
 - If the director of OTTED waives the requirement, it must be stated in writing and explain the reasons for granting the waiver.
2. For research and development projects, the project will serve as a catalyst for an emerging or evolving technology cluster, demonstrate a plan for significant higher education collaboration, provide the state a break-even return on investment within a 20-year period, and receive a one-to-one match from the local community. However, the match requirement may be reduced or waived in rural areas of critical economic concern or reduced in rural communities, brownfields, and enterprise zones within an urban county.
3. For innovation business projects, the project will:
 - Create at least 1,000 direct, new jobs at the business; or if the project is located in a rural city or rural county, the project will create at least 750 direct, new jobs.

⁵ These items must be provided if available, however, they shall be provided prior to disbursement.

- The activity or product for the applicant's project must be within an industry or industries that have been designated as a target industry business under s. 288.106 or a high-impact sector under s. 288.108.
- The cumulative investment in the project is at least \$500 million within a 3-year period; or if the project is located in a rural city or rural county, or in an enterprise zone, the cumulative investment in the project must exceed \$375 million within a 3-year period.

Evaluation

The bill requires Enterprise Florida, Inc, to evaluate proposals for innovation incentive awards and recommend use of appropriated funds to OTTED. In its recommendation to OTTED, Enterprise Florida, Inc. must:

- Describe the project, its required facilities, and the associated product, service, or research and development associated with the project;
- Provide the number of full-time equivalent jobs that will be created by the project, the total estimated average annual wages of such jobs, and the types of business activities and jobs stimulated by the project;
- Provide the amount of the cumulative investment to be dedicated to the project within 3 years and the total investment expected in the project if more than 3 years;
- Describe the economic and fiscal impacts on the local and state economies relative to the investment
- Provide a statement of any special impacts the project is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges;
- Provide a statement of any anticipated or proposed relationships with state universities;
- Provide a statement of the role the incentive is expected to play in the decision of the applicant to locate or expand in this state;
- Provide an explanation of the amount of the award needed to cause the applicant to locate or expand in this state;
- Provide a discussion of the efforts and commitments made by the local community in which the project is to be located to induce the applicant's location or expansion, taking into consideration local resources and abilities; and
- Provide a recommendation for specific performance criteria the applicant would be expected to achieve to receive any payments from the fund and penalties or sanctions for failure to meet or maintain performance conditions.

For research and development facility projects, Enterprise Florida, Inc. must:

- Provide OTTED with a description of the projects' potential to serve as a catalyst for an emerging or evolving technology cluster;
- Provide the percentage of match provided for the project;
- Describe the extent to which the project has or could have a long-term collaborative research and development relationship with a state university or community college;
- Describe the existing or projected impact of the project on established technology clusters or targeted industry sectors;
- Describe the project's contribution to the diversity and resiliency of the innovation economy of Florida; and
- Describe the project's impact on special needs communities, including rural areas, distressed urban areas, and enterprise zones.

Negotiation of Awards/Process for Approval

OTTED may negotiate the proposed award for any applicant meeting the requirements of the Act, after consultation with Enterprise Florida, Inc., taking into consideration the amount of incentive needed to cause the applicant to locate or expand in this state in conjunction with other relevant applicants.

Emphasis must be given to those projects with a potential to stimulate additional private investment and high-quality employment opportunities.

Once Enterprise Florida, Inc. makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval of the award to the Governor. In addition, OTTED must provide the Governor with proposed performance conditions the applicant must meet to obtain the award. The Governor must consult with the President of the Senate and Speaker of the House of Representatives before giving approval for an award. Thereafter, the Governor shall release funds pursuant to the requirements of s. 216.177, F.S.

Performance Contract

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions and the payment of moneys from the Account. Conditions in the contract include those factors identified by Enterprise Florida, Inc. in its request to OTTED, and sanctions for not meeting performance conditions. Enterprise Florida, Inc. shall assist OTTED in validating the performance of an innovation business or research and development facility that has received an award. Moreover, at the conclusion of the agreement, Enterprise Florida, Inc., shall report, within 90 days, the result of the innovation incentive award to the Governor and the Legislature.

Permit Review

The bill provides that the agencies involved in the project shall work with the office to review sites proposed for the location of facilities eligible for the Innovation Incentive Program. Within 20 days of the request for the review by the office, the agencies shall provide the office with a statement as to each site's necessary permits under local, state and federal law and a statement identifying any significant permitting issues, which may result in a denial or significant delay in issuing a license.

Economic Development Trust Fund

Funds allocated to EDTF shall be invested pursuant to s. 17.57 and any interest earned on such investments shall be transferred from EDTF to the General Revenue Fund.⁶

Effective Date; Repeal of Prior Acts The bill provides that the law will take effect on July 1, 2006 and will be repealed on July 1, 2011.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.1089, F.S.; providing for the creation of a program and account, definitions, awards, limitations, application procedure, eligibility requirements, review and award process, investment of funds, report requirements, additional uses of appropriations.

Section 2. Provides appropriations.

Section 3. Amends s. 403.973(16), F.S., creating a review process.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriate \$250,000,000 from nonrecurring general revenue to OTTED for fiscal year 2006-2007.

⁶ s. 17.57, F.S., provides procedures to deposit and invest state money.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires agencies involved in the permitting process for the project to notice OTTED of permitting issues within 20 days. These costs can be absorbed within the agencies' current budgets.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds, does not reduce the county's authority to raise revenue, and does not reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment that made the following changes:

- It removes redundant legislative findings and intent language;
- It removes the power of the Governor to seep unencumbered funds from the Incentive Account;
- It creates a direct appropriation to OTTED from nonrecurring general revenue;
- It provides a carry forward of unencumbered funds through fiscal year 2010-2011; and
- It requires OTTED to review proposed sites for approved projects and it requires agencies involved in the permitting process for the project to notice OTTED of permitting issues within 20 days.

HB 1283

2006
CS

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends
the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to innovation incentives; creating s.
288.1089, F.S.; creating within the Office of Tourism,
Trade, and Economic Development the Innovation Incentive
Program for certain purposes; providing definitions;
creating the Innovation Incentive Account within the
Economic Development Trust Fund; providing for innovation
incentive awards; providing limitations; providing
requirements and limitations on account funds; providing
qualification requirements for review of applicants and
projects by the office and Enterprise Florida, Inc.;
providing proposal evaluation and recommendation
requirements for Enterprise Florida, Inc.; authorizing the
office to negotiate award amounts to applicants; providing
negotiation requirements; requiring the director of the
office to make recommendations to the Governor for
approval or disapproval of certain projects; providing
recommendation requirements; requiring consultation with

HB 1283

2006
CS

the Legislature; providing for certification of applicants as qualified innovation businesses; providing for incentive payment agreements; requiring Enterprise Florida, Inc., to assist the office in validating certain business performances; requiring a report; amending s. 403.973, F.S.; requiring the office to review certain sites for projects funded under the Innovation Incentive Program; amending s. 288.0655, F.S.; correcting a cross-reference; providing an appropriation; providing for carrying forward certain unexpended balances of appropriations until a time certain; providing for office retention of obligated funds to be used for certain purposes; providing for reversion of unobligated funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.1089, Florida Statutes, is created to read:

288.1089 Innovation Incentive Program.--

(1) The Innovation Incentive Program is created within the Office of Tourism, Trade, and Economic Development to ensure that sufficient resources are available to allow the state to respond expeditiously to extraordinary economic opportunities and to compete effectively for high value research and development and innovation business projects.

(2) As used in this section, the term:

HB 1283

2006
CS

(a) "Average wage" means the statewide average wage in the private sector or the average of all private sector wages in the county or in the standard metropolitan area in which the project is located as determined by the Agency for Workforce Innovation.

(b) "Cumulative investment" means the total private investment in buildings and equipment made by an applicant under a project approved pursuant to this section.

(c) "Director" means the director of the Office of Tourism, Trade, and Economic Development.

(d) "Innovation business" means a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate.

(e) "Fiscal year" means the state fiscal year.

(f) "Jobs" means full-time equivalent positions, as that term is consistent with terms used by the Agency for Workforce Innovation and the United States Department of Labor for purposes of unemployment compensation tax administration and employment estimation, resulting directly from a project in this state. The term does not include temporary construction jobs.

(g) "Match" means funding from local sources, public or private, which will be paid to the applicant and which is equal to 100 percent of an award. Eligible match funding may include any tax abatement granted to the applicant under s. 196.1995 or the appraised market value of land, buildings, infrastructure, or equipment conveyed or provided at a discount to the applicant. Complete documentation of a match payment or other

HB 1283

2006
CS

79 conveyance must be presented to and verified by the office prior
80 to transfer of state funds to an applicant. An applicant may not
81 provide, directly or indirectly, more than 5 percent of match
82 funding in any fiscal year. The sources of such funding may not
83 include, directly or indirectly, state funds appropriated from
84 the General Revenue Fund or any state trust fund, excluding tax
85 revenues shared with local governments pursuant to law.

86 (h) "Office" means the Office of Tourism, Trade, and
87 Economic Development.

88 (i) "Project" means the location to or expansion in this
89 state by an innovation business or research and development
90 applicant approved for an award pursuant to this section.

91 (j) "Research and development" means basic and applied
92 research in the sciences or engineering, as well as the design,
93 development, and testing of prototypes or processes of new or
94 improved products. Research and development does not include
95 market research, routine consumer product testing, sales
96 research, research in the social sciences or psychology,
97 nontechnological activities, or technical services.

98 (k) "Research and development facility" means a facility
99 that is predominately engaged in research and development
100 activities. For purposes of this paragraph, the term
101 "predominantly" means at least 51 percent of the time.

102 (3) The Innovation Incentive Account is created within the
103 Economic Development Trust Fund created by 288.095. Funds
104 allocated in the Innovation Incentive Account shall be invested
105 in accordance with s. 17.57, and any interest earned on such
106 funds shall be transferred from the Economic Development Trust

HB 1283

2006
CS

107 Fund to the General Revenue Fund. The total amount of active
108 innovation incentive awards may not exceed the balance remaining
109 in the Innovation Incentive Account.

110 (4) To be eligible for consideration for an innovation
111 incentive award, an innovation business or research and
112 development entity must submit a written application to
113 Enterprise Florida, Inc., before making a decision to locate new
114 operations in this state or expand an existing operation in this
115 state. The application must include, but not be limited to:

116 (a) The applicant's federal employer identification
117 number, unemployment account number, and state sales tax
118 registration number. If such numbers are not available at the
119 time of application, they must be submitted to the office in
120 writing prior to the disbursement of any payments under this
121 section.

122 (b) The location in this state at which the project is
123 located or is to be located.

124 (c) A description of the type of business activity,
125 product, or research and development undertaken by the
126 applicant, including six-digit North American Industry
127 Classification System codes for all activities included in the
128 project.

129 (d) The applicant's projected investment in the project.

130 (e) The total investment, from all sources, in the
131 project.

132 (f) The number of net new full-time equivalent jobs in
133 this state the applicant anticipates having created as of

HB 1283

2006
CS

December 31 of each year in the project and the average annual wage of such jobs.

(g) The total number of full-time equivalent employees currently employed by the applicant in this state, if applicable.

(h) The anticipated commencement date of the project.

(i) A detailed explanation of why the innovation incentive is needed to induce the applicant to expand or locate in the state and whether an award would cause the applicant to locate or expand in this state.

(j) If applicable, an estimate of the proportion of the revenues resulting from the project that will be generated outside this state.

(5) To qualify for review by the office, the applicant must, at a minimum, establish the following to the satisfaction of Enterprise Florida, Inc., and the office:

(a) The jobs created by the project must pay an estimated annual average wage equaling at least 130 percent of the average private sector wage in the area where the project is to be located or the average private sector wage in the state. The office may waive this average wage requirement at the request of Enterprise Florida, Inc., for a project located in a brownfield area designated under s. 376.80, in a rural city or rural county as defined in s. 288.106, or in an enterprise zone, when the merits of the individual project or the specific circumstances in the community in relationship to the project warrant such action. A recommendation for waiver by Enterprise Florida, Inc., must include a specific justification for the waiver and be

HB 1283

2006
CS

transmitted to the office in writing. If the director elects to
waive the wage requirement, the waiver must be stated in writing
and the reasons for granting the waiver must be explained.

(b) A research and development project must:

1. Serve as a catalyst for an emerging or evolving
technology cluster.

2. Demonstrate a plan for significant higher education
collaboration.

3. Provide the state, at a minimum, a break-even return on
investment within a 20-year period.

4. Be provided with a one to one match from the local
community. The match requirement may be reduced or waived in
rural areas of critical economic concern or reduced in rural
communities, brownfields, and enterprise zones.

(c) An innovation business project in this state, other
than a research and development project, must:

1.a. Result in the creation of at least 1,000 direct, new
jobs at the business; or

b. Result in the creation of at least 750 direct, new jobs
if the project is located in a rural city or rural county as
defined in s. 288.106 or in an enterprise zone.

2. Have an activity or product that is within an industry
that is designated as a target industry business under s.
288.106 or a designated sector under s. 288.108.

3.a. Have a cumulative investment of at least \$500 million
within a 3-year period; or

b. Have a cumulative investment that exceeds \$375 million
within a 3-year period if the project is located in a rural

HB 1283

2006
CS

190 | county or rural city as defined in s. 288.106 or in an
191 | enterprise zone.

192 | (6) Enterprise Florida, Inc., shall evaluate proposals for
193 | innovation incentive awards and transmit recommendations for
194 | awards to the office. Such evaluation and recommendation must
195 | include, but need not be limited to:

196 | (a) A description of the project, its required facilities,
197 | and the associated product, service, or research and development
198 | associated with the project.

199 | (b) The number of full-time equivalent jobs that will be
200 | created by the project, the total estimated average annual wages
201 | of such jobs, and the types of business activities and jobs
202 | likely to be stimulated by the investment.

203 | (c) The cumulative investment to be dedicated to the
204 | project within 3 years and the total investment expected in the
205 | project if more than 3 years.

206 | (d) The projected economic and fiscal impacts on the local
207 | and state economies relative to investment.

208 | (e) A statement of any special impacts the project is
209 | expected to stimulate in a particular business sector in the
210 | state or regional economy or in the state's universities and
211 | community colleges.

212 | (f) A statement of any anticipated or proposed
213 | relationships with state universities.

214 | (g) A statement of the role the incentive is expected to
215 | play in the decision of the applicant to locate or expand in
216 | this state.

HB 1283

2006
CS

217 (h) A recommendation and explanation of the amount of the
218 award needed to cause the applicant to expand or locate in this
219 state.

220 (i) A discussion of the efforts and commitments made by
221 the local community in which the project is to be located to
222 induce the applicant's location or expansion, taking into
223 consideration local resources and abilities.

224 (j) A recommendation for specific performance criteria the
225 applicant would be expected to achieve in order to receive
226 payments from the fund and penalties or sanctions for failure to
227 meet or maintain performance conditions.

228 (k) For a research and development facility project:

229 1. A description of the extent to which the project has
230 the potential to serve as catalyst for an emerging or evolving
231 cluster.

232 2. The percentage of match provided for the project.

233 3. A description of the extent to which the project has or
234 could have a long-term collaborative research and development
235 relationship with one or more universities or community colleges
236 in this state.

237 4. A description of the existing or projected impact of
238 the project on established clusters or targeted industry
239 sectors.

240 5. A description of the project's contribution to the
241 diversity and resiliency of the innovation economy of this
242 state.

HB 1283

2006
CS

243 6. A description of the project's impact on special-needs
244 communities, including, but not limited to, rural areas,
245 distressed urban areas, and enterprise zones.

246 (7) In consultation with Enterprise Florida, Inc., the
247 office may negotiate the proposed amount of an award for any
248 applicant meeting the requirements of this section. In
249 negotiating such award, the office shall consider the amount of
250 the incentive needed to cause the applicant to locate or expand
251 in this state in conjunction with other relevant applicant
252 impact and cost information and analysis as described in this
253 section. Particular emphasis shall be given to the potential for
254 the project to stimulate additional private investment and high-
255 quality employment opportunities in the area.

256 (8) Upon receipt of the evaluation and recommendation from
257 Enterprise Florida, Inc., the director shall recommend to the
258 Governor the approval or disapproval of an award. In
259 recommending approval of an award, the director shall include
260 proposed performance conditions that the applicant must meet in
261 order to obtain incentive funds and any other conditions that
262 must be met before the receipt of any incentive funds. The
263 Governor shall consult with the President of the Senate and the
264 Speaker of the House of Representatives before giving approval
265 for an award. Upon approval of an award, the Executive Office of
266 the Governor shall release the funds pursuant to the legislative
267 consultation and review requirements set forth in s. 216.177.

268 (9) Upon approval by the Governor and release of the funds
269 as set forth in subsection (8), the director shall issue a
270 letter certifying the applicant as qualified for an award. The

HB 1283

2006
CS

office and the applicant shall enter into an agreement that sets forth the conditions for payment of incentives. The agreement must include the total amount of funds awarded; the performance conditions that must be met to obtain the award or portions of the award, including, but not limited to, net new employment in the state, average wage, and total investment; demonstration of a baseline of current service and a measure of enhanced capability; the methodology for validating performance; the schedule of payments; and sanctions for failure to meet performance conditions.

(10) Enterprise Florida, Inc., shall assist the office in validating the performance of an innovation business or research and development facility that has received an award. At the conclusion of the innovation incentive award agreement, or its earlier termination, Enterprise Florida, Inc., shall, within 90 days, report the results of the innovation incentive award to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. Subsections (16) through (19) of section 403.973, Florida Statutes, are renumbered as subsections (17) through (20), respectively, and a new subsection (16) is added to that section, to read:

403.973 Expedited permitting; comprehensive plan amendments.--

(16) The office, working with the agencies participating in the memoranda of agreement, shall review sites proposed for the location of facilities eligible for the Innovation Incentive Program under s. 288.1089. Within 20 days after the request for

HB 1283

2006
CS

the review by the office, the agencies shall provide to the office a statement as to each site's necessary permits under local, state, and federal law and an identification of significant permitting issues, which if unresolved, may result in the denial of an agency permit or approval or any significant delay caused by the permitting process.

Section 3. Paragraph (e) of subsection (2) of section 288.0655, Florida Statutes, is amended to read:

288.0655 Rural Infrastructure Fund.--

(2)

(e) To enable local governments to access the resources available pursuant to s. 403.973 (19) ~~(18)~~, the office may award grants for surveys, feasibility studies, and other activities related to the identification and preclearance review of land which is suitable for preclearance review. Authorized grants under this paragraph shall not exceed \$75,000 each, except in the case of a project in a rural area of critical economic concern, in which case the grant shall not exceed \$300,000. Any funds awarded under this paragraph must be matched at a level of 50 percent with local funds, except that any funds awarded for a project in a rural area of critical economic concern must be matched at a level of 33 percent with local funds. In evaluating applications under this paragraph, the office shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

Section 4. For fiscal year 2006-2007, the sum of \$250,000,000 is appropriated from nonrecurring general revenue to the Office of Tourism, Trade, and Economic Development.

HB 1283

2006
CS

327 Notwithstanding s. 216.301, Florida Statutes, and pursuant to s.
328 216.351, Florida Statutes, any unexpended balance from this
329 appropriation shall be carried forward at the end of each fiscal
330 year until the 2010-2011 fiscal year. At the end of the 2010-
331 2011 fiscal year, any obligated funds for qualified projects
332 that are not yet disbursed shall remain with the office to be
333 used for the purposes of this act. Any unobligated funds of this
334 appropriation shall revert to the General Revenue Fund
335 unallocated at the end of the 2010-2011 fiscal year.

336 Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1283 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Fiscal Council

Representative Attkisson offered the following:

Amendment (with title amendment)

Remove line(s) 102 through 109.

===== T I T L E A M E N D M E N T =====

Remove line(s) 11 through 12 and insert:

providing for innovation

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1299 CS

Areas of Critical State Concern

SPONSOR(S): Sorensen

TIED BILLS:

IDEN./SIM. BILLS: SB 2098

REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR			
1) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
2) Fiscal Council		Darity/Dixon	Kelly <i>ck</i>
3)			
4)			
5)			

SUMMARY ANALYSIS

The Florida Keys Area was designated as an area of critical state concern over 30 years ago for the purpose of providing state policies to guide decision making at the local level to protect natural resources and the environment, reverse the deterioration of water quality, and facilitate orderly, well-planned growth while protecting property rights. Current law provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element is not effective until approved by the Department of Community Affairs, and that all local development regulations or comprehensive plans must be in compliance with statutory principles for guiding development. Current law also establishes a process for removing the designation as an area of critical state concern upon the approval of the Administration Commission. This bill:

- Creates a new process for removing the designation of the Florida Keys Area as an area of critical state concern and removes designation unless the Administration Commission finds that substantial progress toward achieving specified goals has not been achieved;
- Provides for continued state review of local regulations for compliance with wastewater treatment and hurricane evacuation goals;
- Allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section for 20 years, and may continue to levy the tax if the county adopts an ordinance reauthorizing levy of the tax and the continued levy is approved at a referendum of the voters;
- Provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the local government infrastructure surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation for 20 years, and may continue to do so if the county adopts an ordinance providing for such continued use;
- Allows a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation;
- Provides that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1299b.FC.doc

DATE: 4/7/2006

may continue to exist and exercise all powers granted by law until terminated by law or action of the governing board;

- Allows an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact an ordinance governing sewerage systems; and
- Preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged.

The bill does not prohibit the future redesignation as an area of critical state concern. This bill preserves existing taxing authority for certain areas of critical state concern, and preserves state liability, if any, in regulatory takings cases in the Florida Keys Area. The fiscal impact of these provisions is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: This bill provides for the continued levy of taxes after designation as an area of critical state concern is removed.

Provide limited government: This bill may reduce the administrative burden on the Department of Community Affairs and the local governments in the Florida Keys Area of Critical State Concern.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida Keys Area of Critical State Concern Generally

Florida's area of critical state concern program (ACSC) was created in 1972 as part of the Environmental Land and Water Management Act of 1972.¹ In 1979, the Legislature enacted s. 380.0552, F.S., designating by statute the Florida Keys Area of Critical State Concern.² In 1986, the Legislature substantially amended s. 380.0552, F.S., designating the section as the "Florida Keys Area Protection Act" and including provisions to provide legislative intent, ratify the administrative designation of the Florida Keys Area as an area of critical state concern, establish a process for removal of the designation, provide principles for guiding development, and establish a process for modifying comprehensive plans and land development regulations. The legislative intent of the Act is:

- To establish a land use management system that protects the natural environment of the Florida Keys.
- To establish a land use management system that conserves and promotes the community character of the Florida Keys.
- To establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public facilities and services.
- To provide for affordable housing in close proximity to places of employment in the Florida Keys.
- To establish a land use management system that promotes and supports a diverse and sound economic base.
- To protect the constitutional rights of property owners to own, use, and dispose of their real property.
- To promote coordination and efficiency among governmental agencies with permitting jurisdiction over land use activities in the Florida Keys.

Section 380.0552(9), F.S., provides that while any land development regulation or element of a local comprehensive plan in the Florida Keys may be enacted, amended or rescinded by the local government, the regulation or element does not become effective until reviewed and approved by the Department of Community Affairs (DCA). Any local development regulation or comprehensive plan must be in compliance with the principles for guiding development set forth in s. 380.0552(7), F.S.

Section 380.0552(7), F.S., establishes principles for guiding development in the Florida Keys Area of Critical State Concern. State, regional, and local agencies and units of government in the Florida Keys

¹ ch. 72-317, L.O.F.

² ch. 79-73, L.O.F.

Area must coordinate their plans and conduct their programs and regulatory activities consistent with the following principles for guiding development:

- To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.
- To protect shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.
- To limit the adverse impacts of development on the quality of water throughout the Florida Keys.
- To enhance natural scenic resources, promote the aesthetic benefits of the natural environment, and ensure that development is compatible with the unique historic character of the Florida Keys.
- To protect the historical heritage of the Florida Keys.
- To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments, including:
 - The Florida Keys Aqueduct and water supply facilities;
 - Sewage collection and disposal facilities;
 - Solid waste collection and disposal facilities;
 - Key West Naval Air Station and other military facilities;
 - Transportation facilities;
 - Federal parks, wildlife refuges, and marine sanctuaries;
 - State parks, recreation facilities, aquatic preserves, and other publicly owned properties;
 - City electric service and the Florida Keys Electric Co-op; and
 - Other utilities, as appropriate.
- To limit the adverse impacts of public investments on the environmental resources of the Florida Keys.
- To make available adequate affordable housing for all sectors of the population of the Florida Keys.
- To provide adequate alternatives for the protection of public safety and welfare in the event of a natural or manmade disaster and for a post-disaster reconstruction plan.
- To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the Department of Community Affairs (DCA) must recommend to the Administration Commission (Commission) the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Generally, the DCA reviews three basic requirements to determine whether to recommend to the Governor and Cabinet the repeal of the designation of an area of critical state concern:

- Adoption of adequate comprehensive plans consistent with the Principles for Guiding Development and the periodic evaluation of the plans;
- Adoption of adequate land development regulations to implement the plan and the Principles for Guiding Development; and
- Administration of the plans and regulations in a manner that ensures protection of the resources and the demonstration of proper implementation based upon the DCA's review and monitoring of the issuance of permits and development orders and the lack of any legal action filed by the DCA.

Administration Commission rule 28-20.110, F.A.C., establishes a 10-year work plan that, in effect, is an amendment to the county comprehensive plan. In 2003, the rule was amended to focus the plan on four issues: (1) habitat protection; (2) wastewater treatment; (3) storm water treatment; and (4) affordable housing. Currently, the county is in Year Nine of the workplan, which ends on July 12, 2006. The workplan objectives for Year Nine include initiation of the process to obtain bond financing secured by connection fees and securing sites for wastewater facilities. The objectives for Year Ten, which ends on July 12, 2007, relate exclusively to the construction, financing, and operation of wastewater treatment facilities. Pursuant to the rule, Monroe County and the DCA must report to the Commission on an annual basis documenting the degree to which the 10-year work program objectives have been achieved. The Commission must consider the findings and recommendations provided in the reports and determine whether substantial progress has been achieved toward accomplishing the tasks of the work program. On January 31, 2006, the Commission found that substantial progress had been made through Years Seven and Year Eight of the workplan.

In its 2005 Annual Report to the Administration Commission, the DCA identified four remaining critical needs in the Keys Area:

- Water quality improvement;
- Habitat protection;
- Affordable housing; and
- Hurricane evacuation.

In its report, the DCA indicated that "[t]he critical planning challenges still remaining in the Florida Keys continue to include funding for construction of wastewater treatment facilities, land acquisition for conservation purposes and affordable housing sites, elimination of direct discharge storm water outfalls, storm water retrofits for US Highway 1 and hurricane evacuation capability."

EFFECT OF PROPOSED CHANGES -- Section-by-Section Analysis

Section 1.

Current Situation

Currently, s. 125.0108, F.S., provides that any county creating a land authority pursuant to s. 380.0663(1), F.S., is authorized to levy by ordinance, in the area of the county designated as an area of critical state concern, a tourist impact tax, or throughout the county if the area or areas of critical state concern are greater than 50 percent of the land area of the county. The tax is not be effective unless and until land development regulations and a local comprehensive plan that meet the requirements of ch. 380, F.S., become effective and the tax is approved by referendum of the voters. The tourist impact tax must be levied at the rate of 1 percent of each dollar and major fraction thereof of the total consideration charged for such taxable privilege. Every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such establishment is exempt from the tax imposed by s. 212.03, F.S., is exercising a taxable privilege. When receipt of consideration is by way of property

other than money, the tax must be levied and imposed on the fair market value of such nonmonetary consideration.

All tax revenues generated by the tourist impact tax, less administrative costs, must be distributed as follows:

- Fifty percent must be transferred to the land authority to be used to purchase property in the area of critical state concern for which the revenue is generated. An amount not to exceed 5 percent may be used for administration and other costs incident to such purchases.
- Fifty percent must be distributed to the governing body of the county where the revenue was generated and must be used to offset the loss of ad valorem taxes due to acquisitions provided for by this act.

Effect of Proposed Changes

This section amends s. 125.0108, F.S., to allow a county that has levied the tourist impact tax authorized by this section in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section for 20 years, and may continue to levy the tax after 20 years if the county adopts an ordinance reauthorizing levy of the tax and the continued levy is approved at a referendum of the voters.

Section 2.

Current Situation

Section 212.055(2), F.S., authorizes the governing authority in each county to levy a discretionary sales surtax of 0.5 percent or 1 percent, also known as the Local Government Infrastructure Surtax. The levy of the surtax must be pursuant to ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax. If the governing bodies of the municipalities representing a majority of the county's population adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, the levy of the surtax must be placed on the ballot and takes effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance or, if the ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years. The levy of the surtax may be extended only by approval of a majority of the electors of the county voting in a referendum.

The proceeds of the surtax and any interest accrued thereto must be expended by the school district or within the county and municipalities within the county or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure and to acquire land for public recreation or conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills that are already closed or are required to close by order of the Department of Environmental Protection. Neither the proceeds nor any interest accrued thereto may be used for operational expenses of any infrastructure, except that any county with a population of less than 75,000 that is required to close a landfill by order of the Department of Environmental Protection may use the proceeds or any interest.

Under s. 212.055(2)(f), F.S., a county designated as an area of critical state concern on the effective date of the section, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

- The debt service obligations for any year are met;

- The county's comprehensive plan has been determined to be in compliance with part II of ch. 163, F.S.; and
- The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66, F.S., authorizing additional uses of the surtax proceeds and interest.

In addition, those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized by this section.

Effect of Proposed Changes

This bill amends s. 212.055(2)(f), F.S., to provide that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after the removal of the designation for 20 years, and may continue to levy the tax after 20 years if the county adopts an ordinance providing for such continued use.

Section 3.

Current Situation

A process for removing the designation as an area of critical state concern is provided in s. 380.0552(4), F.S. Under this provision, the DCA must recommend to the Administration Commission the removal of the designation if the DCA determines that all local land development regulations and local comprehensive plans and the administration of such regulations and plans are adequate to protect the Florida Keys Area, continue to carry out the legislative intent, and are in compliance with the principles for guiding development. If the Commission concurs with the recommendations of the DCA to remove the designation, the Commission must, within 45 days of receipt of the recommendation, initiate rulemaking to remove the designation. The DCA must make this determination annually until the designation is removed.

Effect of Proposed Changes

This bill amends s. 380.0552(4), F.S., to provide a new procedure for dedesignating the Florida Keys Area as an area of critical state concern. Under the new procedure, between July 12, 2007, and August 30, 2007, the DCA must submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Commission must determine, prior to October 1, 2007, whether substantial progress has been achieved toward accomplishing the tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section is removed on October 1, 2007, unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the DCA's report, the Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Commission must provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

If the designation of the Florida Keys Area as an area of critical state concern is not removed, the DCA must submit a written annual report to the Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing

remaining tasks under the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. The Commission must determine, within 45 days after receipt of the annual report, whether substantial progress has been achieved toward accomplishing the remaining tasks of the work program. The designation of the Florida Keys Area as an area of critical state concern under this section is removed unless the Commission finds that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Commission must initiate rulemaking to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If the Commission finds that substantial progress has not been achieved, the Commission must provide to the Monroe County Commission, within 30 days after making its finding, a report detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

The term "work program" means the 10-year work program set forth in ch. 28-20.110, F.A.C., on January 1, 2006, excluding amendments to the work program that take effect after January 1, 2006.

Judicial review of the Administration Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program must be sought in the circuit court in Leon County, Florida within 30 days after rendition of the Administration Commission determination. The Commission's determination as to whether substantial progress has been made toward accomplishing the tasks of the work program must be upheld if it is fairly debatable and is not subject to administrative review under ch. 120, F.S., the Florida Administrative Procedure Act.

After removal of the designation as an area of critical state concern, the DCA must review proposed local comprehensive plans, and any amendments to existing comprehensive plans, which are applicable to the Florida Keys Area, the boundaries of which were described in ch. 28-29, F.A.C., as of January 1, 2006, for compliance with the following:

1. Adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital Improvements Element and adoption of standards for the construction of wastewater treatment facilities that meet or exceed the criteria of Chapter 99-395, Laws of Florida.
2. Adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours. The hurricane evacuation clearance time shall be determined by a hurricane evacuation study conducted in accordance with a professionally accepted methodology and approved by the state land planning agency.

All procedures and penalties described in s. 163.3184, F.S., are applicable to this review. In addition to reviewing proposed local comprehensive plans and amendments for compliance as defined in s. 163.3184, F.S.

Section 4.

Current Situation

Section 380.0663, F.S., authorizes each county in which one or more areas of critical state concern are located to create, by ordinance, a land authority to be governed by the county commission. Section 380.0666, F.S., grants powers to these authorities, including the power to acquire and dispose of real and personal property or any interest therein when acquisition is necessary or appropriate to protect the natural environment, provide public access or public recreational facilities, preserve wildlife habitat areas, provide affordable housing to very-low-income, low-income, or moderate-income persons, as

defined in s. 420.0004³ F.S., or provide access to management of acquired lands; to acquire interests in land by means of land exchanges; and to enter into all alternatives to the acquisition of fee interests in land, including, but not limited to, the acquisition of easements, development rights, life estates, leases, and leaseback arrangements. However, the land authority may make such acquisition only if:

- The acquisition is consistent with land development regulations and local comprehensive plans adopted and approved pursuant to this chapter;
- The property acquired is within an area designated as an area of critical state concern at the time of acquisition; and
- The property to be acquired has not been selected for purchase through another local, regional, state, or federal public land acquisition program. Such restriction shall not apply if the land authority cooperates with the other public land acquisition programs which listed the lands for acquisition, to coordinate the acquisition and disposition of such lands. In such cases, the land authority may enter into contractual or other agreements to acquire lands jointly or for eventual resale to other public land acquisition programs.

Effect of Proposed Changes

The bill amends s. 380.0666, F.S., to allow a land authority to acquire property when necessary or appropriate to provide affordable housing to families whose income does not exceed 160 percent of the median family income for the area. However, the land authority may only acquire property located within an area designated as an area of critical state concern at the time of acquisition or is within an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation.

Section 5.

Current Situation

Section 380.0674, F.S., provides that the land authority and its corporate existence continue until terminated by law or action of the governing board of the county that established it; however, no such law or action may take effect so long as the land authority has bonds outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of the land authority, all its rights and properties in excess of its obligations pass to and be vested in the state.

Effect of Proposed Changes

This bill amends s. 380.0674, F.S., to provide that a land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may continue to exist and exercise all powers granted by this chapter until terminated by law or action of the governing board.

Section 6.

³ "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

Current Situation

Chapter 99-395, L.O.F., provides that notwithstanding any provision of ch. 380, part I, F.S., to the contrary, a local government within the Florida Keys Area of critical state concern may enact an ordinance that:

- o Requires connection to a central sewerage system within 30 days of notice of availability of services; and
- o Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

Effect of Proposed Changes

This bill amends ch. 99-395, L.O.F., to allow an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to enact such an ordinance.

Section 7.

This bill provides that, if the designation of the Florida Keys Area as an area of critical state concern is removed, the state remains liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in ch. 28-29, F.A.C., and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), F.S. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation's removal, the state's liability in the inverse condemnation action shall be determined by the courts in the manner in which the state's liability is determined in areas that are not areas of critical state concern. The state is provided standing to appear in any inverse condemnation action.

Section 8.

This section provides that the bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 125.0108, F.S.; authorizing the continued levy of the tourist impact tax in areas of critical state concern removed from designation.

Section 2. Amends s. 212.055, F.S.; authorizing certain counties to continue the use of a portion of local government infrastructure surtax proceeds for certain purposes after removal of designation of an area as an area of critical state concern.

Section 3. Amends s. 380.0552, F.S.; providing requirements, procedures, and criteria for Administration Commission removal of designation of the Florida Keys Area as an area of critical state concern; requiring removal of the designation under certain circumstances; providing for judicial review of Administration Commission determinations.

- Section 4. Amends s. 380.0666, F.S.; revising the powers of a land authority in an area of critical state concern to acquire property to provide affordable housing; providing for continued power of a land authority to acquire property within an area of critical state concern removed from designation.
- Section 5. Amends s. 380.0674, F.S.; providing for the continuation of a land authority in an area of critical state concern after removal of the designation.
- Section 6. Amends s.4, ch. 99-395, L.O.F.; authorizing local governments in areas of critical state concern removed from designation to continue to enact ordinances relating to central sewerage systems.
- Section 7. Provides for continuation of existing state liability in certain inverse condemnation actions related to the Florida Keys Area after removal of designation.
- Section 8. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures: This bill preserves existing state liability, if any, in regulatory takings cases if local regulations are unchanged. The fiscal impact of this provision, if any, is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.
2. Expenditures: The reduction in administrative review requirements may reduce the costs to local governments of obtaining approval of comprehensive plans, plan amendments, and land use regulations.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** The bill allows a county that has levied the tourist impact tax in an area or areas designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation to continue to levy the tourist impact tax subject to the limitations in that section. The bill also provides that a county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes after removal of the designation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY: This bill requires the Administration Commission to initiate rulemaking to repeal rules related to the Florida Keys Area of Critical State Concern upon removal of its designation as an area of critical state concern.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Local Government Council adopted two amendments offered by Representative Sorensen for the purpose of:

- Modifying the provision governing appeals of Administration Commission decisions to the circuit court for clarification purposes and to establish venue in Leon County;
- Requiring, after designation as an area of critical state concern is removed, review of future proposed comprehensive plans and plan amendments for compliance with the adoption of construction schedules for wastewater facilities improvements in the annually adopted Capital Improvements Element and adoption of standards for the construction of wastewater treatment facilities, as well as compliance with the adoption of goals, objectives, and policies to protect public safety and welfare in the event of a natural disaster by maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours;
- Allowing the county to continue levying the tourist impact tax after 20 years only if the county adopts an ordinance reauthorizing levy of the tax and the continued levy of the tax is approved by referendum; and
- Allowing a county to continue using up to 10 percent of the Local Infrastructure Surtax proceeds for any public purpose other than for infrastructure for 20 years, and may continue to do so after 20 years only if the county adopts an ordinance providing for such continued use of the surtax proceeds.

HB 1299

CORRECTED COPY

2006
CS

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to areas of critical state concern;
amending s. 125.0108, F.S.; authorizing the continued levy
of the tourist impact tax for a certain period in areas of
critical state concern removed from designation; providing
for continued levy beyond that period pursuant to
referendum approval of an ordinance reauthorizing the
levy; amending s. 212.055, F.S.; authorizing certain
counties to continue the use of a portion of local
government infrastructure surtax proceeds for certain
purposes for a certain period after removal of designation
of an area as an area of critical state concern; providing
for continued use of a portion of such proceeds for
certain purposes pursuant to ordinance; amending s.
380.0552, F.S.; providing requirements, procedures, and
criteria for Administration Commission removal of
designation of the Florida Keys Area as an area of
critical state concern; requiring removal of the
designation under certain circumstances; providing for

HB 1299

CORRECTED COPY

2006

CS

judicial review of Administration Commission determinations; requiring review of proposed comprehensive plans and amendments to existing plans after removal of designation and providing review criteria; amending s. 380.0666, F.S.; revising the powers of a land authority in an area of critical state concern to acquire property to provide affordable housing; providing for continued power of a land authority to acquire property within an area of critical state concern removed from designation; amending s. 380.0674, F.S.; providing for the continuation of a land authority in an area of critical state concern after removal of the designation; amending s.4, ch. 99-395, Laws of Florida; authorizing local governments in areas of critical state concern removed from designation to continue to enact ordinances relating to central sewerage systems; providing for continuation of existing state liability in certain inverse condemnation actions related to the Florida Keys Area after removal of designation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) is added to subsection (1) of section 125.0108, Florida Statutes, to read:

125.0108 Areas of critical state concern; tourist impact tax.--

(1)

HB 1299

CORRECTED COPY

2006

CS

51 (g) A county that has levied the tourist impact tax
 52 authorized by this section in an area or areas designated as an
 53 area of critical state concern for at least 20 consecutive years
 54 prior to removal of the designation may continue to levy the
 55 tourist impact tax in accordance with this section for 20 years
 56 following removal of the designation. After expiration of the
 57 20-year period, a county may continue to levy the tourist impact
 58 tax authorized by this section if the county adopts an ordinance
 59 reauthorizing levy of the tax and the continued levy of the tax
 60 is approved by referendum as provided for in subsection (5).

61 Section 2. Paragraph (f) of subsection (2) of section
 62 212.055, Florida Statutes, is amended to read:

63 212.055 Discretionary sales surtaxes; legislative intent;
 64 authorization and use of proceeds.--It is the legislative intent
 65 that any authorization for imposition of a discretionary sales
 66 surtax shall be published in the Florida Statutes as a
 67 subsection of this section, irrespective of the duration of the
 68 levy. Each enactment shall specify the types of counties
 69 authorized to levy; the rate or rates which may be imposed; the
 70 maximum length of time the surtax may be imposed, if any; the
 71 procedure which must be followed to secure voter approval, if
 72 required; the purpose for which the proceeds may be expended;
 73 and such other requirements as the Legislature may provide.
 74 Taxable transactions and administrative procedures shall be as
 75 provided in s. 212.054.

76 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

77 (f)1. Notwithstanding paragraph (d), a county that has a
 78 population of 50,000 or less on April 1, 1992, or any county

HB 1299

CORRECTED COPY

2006

CS

designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may use the proceeds and interest of the surtax for any public purpose if:

a. The debt service obligations for any year are met;

b. The county's comprehensive plan has been determined to be in compliance with part II of chapter 163; and

c. The county has adopted an amendment to the surtax ordinance pursuant to the procedure provided in s. 125.66 authorizing additional uses of the surtax proceeds and interest.

2. A municipality located within a county that has a population of 50,000 or less on April 1, 1992, or within a county designated as an area of critical state concern on the effective date of this act, and that imposed the surtax before July 1, 1992, may not use the proceeds and interest of the surtax for any purpose other than an infrastructure purpose authorized in paragraph (d) unless the municipality's comprehensive plan has been determined to be in compliance with part II of chapter 163 and the municipality has adopted an amendment to its surtax ordinance or resolution pursuant to the procedure provided in s. 166.041 authorizing additional uses of the surtax proceeds and interest. Such municipality may expend the surtax proceeds and interest for any public purpose authorized in the amendment.

3. Those counties designated as an area of critical state concern which qualify to use the surtax for any public purpose may use only up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes authorized

HB 1299

CORRECTED COPY

2006
CS

by this section. A county that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation, and that qualified to use the surtax for any public purpose at the time of the removal of the designation, may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure purposes for 20 years following removal of the designation, notwithstanding subparagraph (a)2. After expiration of the 20-year period, a county may continue to use up to 10 percent of the surtax proceeds for any public purpose other than for infrastructure if the county adopts an ordinance providing for such continued use of the surtax proceeds.

Section 3. Subsection (4) of section 380.0552, Florida Statutes, is amended to read:

380.0552 Florida Keys Area; protection and designation as area of critical state concern.--

(4) REMOVAL OF DESIGNATION.--

(a) Between July 12, 2007, and August 30, 2007, the state land planning agency shall submit a written report to the Administration Commission describing in detail the progress of the Florida Keys Area toward accomplishing the tasks of the work program as defined in paragraph (c) and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been achieved. Subsequent to receipt of the report, the Administration Commission shall determine, prior to October 1, 2007, whether substantial progress has been achieved toward accomplishing the tasks of the work program. The designation of the Florida Keys

HB 1299

CORRECTED COPY

2006
CS

Area as an area of critical state concern under this section shall be removed October 1, 2007, unless the Administration Commission finds, after receipt of the state land planning agency report, that substantial progress has not been achieved toward accomplishing the tasks of the work program. If the designation of the Florida Keys Area as an area of critical state concern is removed, the Administration Commission, within 60 days after removal of the designation, shall initiate rulemaking pursuant to chapter 120 to repeal any rules relating to the designation of the Florida Keys Area as an area of critical state concern. If, after receipt of the state land planning agency's report, the Administration Commission finds that substantial progress toward accomplishing the tasks of the work program has not been achieved, the Administration Commission shall provide a written report to the Monroe County Commission within 30 days after making such finding detailing the tasks under the work program that must be accomplished in order for substantial progress to be achieved within the next 12 months.

(b) If the designation of the Florida Keys Area as an area of critical state concern is not removed in accordance with paragraph (a), the state land planning agency shall submit a written annual report to the Administration Commission on November 1 of each year, until such time as the designation is removed, describing the progress of the Florida Keys Area toward accomplishing remaining tasks under the work program and providing a recommendation as to whether substantial progress toward accomplishing the tasks of the work program has been

163 achieved. The Administration Commission shall determine, within
164 45 days after receipt of the annual report, whether substantial
165 progress has been achieved toward accomplishing the remaining
166 tasks of the work program. The designation of the Florida Keys
167 Area as an area of critical state concern under this section
168 shall be removed unless the Administration Commission finds that
169 substantial progress has not been achieved toward accomplishing
170 the tasks of the work program. If the designation of the Florida
171 Keys Area as an area of critical state concern is removed, the
172 Administration Commission, within 60 days after removal of the
173 designation, shall initiate rulemaking pursuant to chapter 120
174 to repeal any rules relating to the designation of the Florida
175 Keys Area as an area of critical state concern. If the
176 Administration Commission finds that substantial progress has
177 not been achieved, the Administration Commission shall provide
178 to the Monroe County Commission, within 30 days after making its
179 finding, a report detailing the tasks under the work program
180 that must be accomplished in order for substantial progress to
181 be achieved within the next 12 months.

182 (c) For purposes of this subsection, the term "work
183 program" means the 10-year work program as set forth in chapter
184 28-20.110, Florida Administrative Code, on January 1, 2006,
185 excluding amendments to the work program that take effect after
186 January 1, 2006.

187 (d) The determination of the Administration Commission as
188 to whether substantial progress has been made toward
189 accomplishing the tasks of the work program may be judicially
190 reviewed pursuant to chapter 86. All proceedings shall be

HB 1299

CORRECTED COPY

2006
CS

191 conducted in the circuit court of the judicial circuit where the
192 Administration Commission maintains its headquarters and shall
193 be initiated within 30 days after rendition of the
194 Administration Commission's determination. The Administration
195 Commission's determination as to whether substantial progress
196 has been made toward accomplishing the tasks of the work program
197 shall be upheld if it is fairly debatable and shall not be
198 subject to administrative review under chapter 120.

199 (e) After removal of the designation as an area of
200 critical state concern, the state land planning agency shall
201 review proposed local comprehensive plans, and any amendments to
202 existing comprehensive plans, which are applicable to the
203 Florida Keys Area, the boundaries of which were described in
204 chapter 28-29, Florida Administrative Code, as of January 1,
205 2006, for compliance with subparagraphs 1. and 2., in addition
206 to reviewing proposed local comprehensive plans and amendments
207 for compliance as defined in s. 163.3184. All procedures and
208 penalties described in s. 163.3184 apply to the review conducted
209 pursuant to this paragraph.

210 1. Adoption of construction schedules for wastewater
211 facilities improvements in the annually adopted capital
212 improvements element and adoption of standards for the
213 construction of wastewater treatment facilities which meet or
214 exceed the criteria of chapter 99-395, Laws of Florida.

215 2. Adoption of goals, objectives, and policies to protect
216 public safety and welfare in the event of a natural disaster by
217 maintaining a hurricane evacuation clearance time for permanent
218 residents of no more than 24 hours. The hurricane evacuation

HB 1299

CORRECTED COPY

2006
CS

219 clearance time shall be determined by a hurricane evacuation
220 study conducted in accordance with a professionally accepted
221 methodology and approved by the state land planning agency. The
222 ~~state land planning agency, following July 15, 1990, shall~~
223 ~~recommend to the Administration Commission the removal of the~~
224 ~~designation specified in subsection (3) if it determines that~~
225 ~~all local land development regulations and local comprehensive~~
226 ~~plans and the administration of such regulations and plans are~~
227 ~~adequate to protect the Florida Keys Area and continue to carry~~
228 ~~out the legislative intent incorporated in subsection (2) and~~
229 ~~are in compliance with the principles for guiding development~~
230 ~~incorporated in subsection (7). If the Administration Commission~~
231 ~~concurs with the recommendations of the state land planning~~
232 ~~agency to remove the designation, it shall, within 45 days of~~
233 ~~receipt of the recommendation, initiate rulemaking to remove the~~
234 ~~designation. The state land planning agency shall thereafter~~
235 ~~make said determination annually, until such time as the~~
236 ~~designation is removed.~~

237 Section 4. Subsection (3) of section 380.0666, Florida
238 Statutes, is amended to read:

239 380.0666 Powers of land authority.--The land authority
240 shall have all the powers necessary or convenient to carry out
241 and effectuate the purposes and provisions of this act,
242 including the following powers, which are in addition to all
243 other powers granted by other provisions of this act:

244 (3) To acquire and dispose of real and personal property
245 or any interest therein when such acquisition is necessary or
246 appropriate to protect the natural environment, provide public

HB 1299

CORRECTED COPY

2006

CS

247 access or public recreational facilities, preserve wildlife
 248 habitat areas, provide affordable housing to families whose
 249 income does not exceed 160 percent of the median family income
 250 for the area ~~very low income, low income, or moderate income~~
 251 ~~persons, as defined in s. 420.0004~~, or provide access to
 252 management of acquired lands; to acquire interests in land by
 253 means of land exchanges; and to enter into all alternatives to
 254 the acquisition of fee interests in land, including, but not
 255 limited to, the acquisition of easements, development rights,
 256 life estates, leases, and leaseback arrangements. However, the
 257 land authority shall make such acquisition only if:

258 (a) Such acquisition is consistent with land development
 259 regulations and local comprehensive plans adopted and approved
 260 pursuant to this chapter;

261 (b) The property acquired is within an area designated as
 262 an area of critical state concern at the time of acquisition or
 263 is within an area that was designated as an area of critical
 264 state concern for at least 20 consecutive years prior to removal
 265 of the designation; and

266 (c) The property to be acquired has not been selected for
 267 purchase through another local, regional, state, or federal
 268 public land acquisition program. Such restriction shall not
 269 apply if the land authority cooperates with the other public
 270 land acquisition programs which listed the lands for
 271 acquisition, to coordinate the acquisition and disposition of
 272 such lands. In such cases, the land authority may enter into
 273 contractual or other agreements to acquire lands jointly or for
 274 eventual resale to other public land acquisition programs.

HB 1299

CORRECTED COPY

2006
CS

Section 5. Section 380.0674, Florida Statutes, is amended to read:

380.0674 Corporate existence.--

(1) The land authority and its corporate existence shall continue until terminated by law or action of the governing board of the county that established it; however, no such law or action shall take effect so long as the land authority shall have bonds outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of the land authority, all its rights and properties in excess of its obligations shall pass to and be vested in the state.

(2) A land authority created by a county in which one or more areas have been designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation shall continue to exist and exercise all powers granted by this chapter until terminated by law or action of the governing board pursuant to subsection (1).

Section 6. Section 4 of chapter 99-395, Laws of Florida, is amended to read:

Section 4. Notwithstanding any provision of chapter 380, part I, to the contrary, a local government within the Florida Keys area of critical state concern or an area that was designated as an area of critical state concern for at least 20 consecutive years prior to removal of the designation may enact an ordinance that:

(1) Requires connection to a central sewerage system within 30 days of notice of availability of services; and

HB 1299

CORRECTED COPY

2006
CS

(2) Provides a definition of onsite sewage treatment and disposal systems that does not exclude package sewage treatment facilities if such facilities are in full compliance with all regulatory requirements and treat sewage to advanced wastewater treatment standards or utilize effluent reuse as their primary method of effluent disposal.

Section 7. If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes. If, after the designation of the Florida Keys Area as an area of critical state concern is removed, an inverse condemnation action is initiated based upon land use regulations that were not adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission and in effect on the date of the designation's removal, the state's liability in the inverse condemnation action shall be determined by the courts in the manner in which the state's liability is determined in areas that are not areas of critical state concern. The state shall have standing to appear in any inverse condemnation action.

HB 1299

CORRECTED COPY

2006
CS

330 Section 8. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7179 PCB FT 06-01 Corporate Income Tax
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	9 Y, 0 N	Levin	Diez-Arguelles
1) Fiscal Council		Levin <i>[Signature]</i>	Kelly <i>ck</i>
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida income tax. Section 220.03, Florida Statutes, defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is currently defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2005.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 during 2005, by adopting the Internal Revenue Code as in effect on January 1, 2006. The definition provides for "piggybacking" each change made during 2005 to the Internal Revenue Code.

The bill takes effect upon becoming a law and operates retroactively to January 1, 2006.

The Revenue Estimating Conference has estimated that the impact of this bill on state revenues is negative indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government:

The bill permits Florida corporations to rely upon one set of fiscal books, rather than upon separate books for federal and state income taxes.

B. EFFECT OF PROPOSED CHANGES:

Florida's Corporate Income Tax follows the Federal Internal Revenue Code (IRC) by using federal rules and starting with federal taxable income as the tax base for Florida income tax. Section 220.03, Florida Statutes, defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 2005.

Florida's Constitution forbids the Legislature from delegating its legislative authority to another body, such as Congress. While the Legislature may adopt by reference a federal law, the Legislature may only adopt a law that is in existence when the legislation is passed. Since the IRC usually changes every year, it is necessary for Florida to adopt the most recent version of the IRC each year.

This bill updates the Florida Income Tax Code to reflect the changes Congress has made to the IRC. This definition provides for "piggybacking" each change made during 2005 to the IRC.

This bill ensures that corporations which are subject to Florida corporate income tax can base their calculations on current IRS rules. Failure to pass this bill would mean these corporations would need to keep two sets of accounts: one for Florida and one for IRS purposes.

The bill takes effect upon becoming a law and operates retroactively to January 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 220.03(1)(n), F.S., to update references to the Internal Revenue Code.

Section 2: Provides that the bill shall take effect upon becoming law and shall operate retroactively to January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference has estimated that the impact of this bill on state revenues is negative indeterminate.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill ensures that corporations which are subject to Florida corporate income tax can base their calculations on current IRS rules. Failure to pass this bill would mean these corporations would need to keep two sets of accounts: one for Florida and one for IRS purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 7179

2006

A bill to be entitled
An act relating to the corporate income tax; amending s.
220.03, F.S.; providing for the adoption of the 2006
version of the Internal Revenue Code; providing for
retroactive operation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) of subsection (1) and subsection
(2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.--

(1) SPECIFIC TERMS.--When used in this code, and when not
otherwise distinctly expressed or manifestly incompatible with
the intent thereof, the following terms shall have the following
meanings:

(n) "Internal Revenue Code" means the United States
Internal Revenue Code of 1986, as amended and in effect on
January 1, 2006 ~~2005~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.--When used in this code and
neither otherwise distinctly expressed nor manifestly
incompatible with the intent thereof:

(a) The word "corporation" or "taxpayer" shall be deemed
to include the words "and its successors and assigns" as if
these words, or words of similar import, were expressed. ~~+~~

(b) Any term used in any section of this code with respect
to the application of, or in connection with, the provisions of
any other section of this code shall have the same meaning as in
such other section. ~~+~~ ~~and~~

HB 7179

2006

29 (c) Any term used in this code shall have the same meaning
30 as when used in a comparable context in the Internal Revenue
31 Code and other statutes of the United States relating to federal
32 income taxes, as such code and statutes are in effect on January
33 1, 2006 ~~2005~~. However, if subsection (3) is implemented, the
34 meaning of any term shall be taken at the time the term is
35 applied under this code.

36 Section 2. This act shall take effect upon becoming a law
37 and shall operate retroactively to January 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7183 PCB FT 06-05 Property Tax Exemptions
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	6 Y, 2 N	Monroe	Diez-Arguelles
1) Fiscal Council		Monroe	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Under Article VII, section (3)(a), of the Florida Constitution the Legislature is authorized to provide an exemption from the property tax for property used predominately for religious purposes. This bill creates section 196.1987, F.S. to specifically describe one type of property eligible for the religious exemption.

Under the bill, the exemption applies if the property:

- is owned by an entity exempt under section 501(c)(3) of the Internal Revenue Code;
- is used for activities which, according to written correspondence from the Internal Revenue Service, do not endanger its status as an exempt entity;
- is open to the public free of charge at least one day each year;
- is used to exhibit, illustrate, and interpret biblical manuscripts, codices, stone tablets, and other biblical archives;
- is used to provide live and recorded demonstrations, explanations, reenactments, and illustrations of biblical history and biblical worship; and
- is used to exhibit times, places, and events of biblical history and significance.

This bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – This bill would ensure that taxpayers operating biblical history displays will continue to be exempt from paying taxes.

B. EFFECT OF PROPOSED CHANGES:

Under Article VII, section (3)(a), of the Florida Constitution the Legislature is authorized to provide an exemption from the property tax for property used predominately for religious purposes. Section 196.196, F.S., enacts this exemption and provides some guidance as to how it is to be administered. However, occasionally there is a dispute as to what constitutes a religious use of property.

For example, in the recent case of Zion's Hope v. Donegan (Fla. 9th Cir. Ct., March 3, 2006), the issue was whether the property was being used for a religious purpose and exempt from taxation. The Property Appraiser maintained that the property was a theme park that simply had a biblical theme, while the taxpayer maintained that the land was being used "to impact Christian and non-Christians alike with the life-changing message of Jesus Christ, through the format of a living Biblical museum."

The court entered a summary judgment for the taxpayers stating that their use of the property was a religious use and that the property was exempt from ad valorem taxation.

This bill amends s. 196.196, F.S., to specifically describe and limit the religious purposes exemption. Under the bill, the exemption applies if the property:

- is owned by an entity exempt under section 501(c)(3) of the Internal Revenue Code;
- is used for activities which, according to written correspondence from the Internal Revenue Service, do not endanger its status as an exempt entity;
- is open to the public free of charge at least one day each year;
- is used to exhibit, illustrate, and interpret Biblical manuscripts, codices, stone tablets, and other Biblical archives;
- is used to provide live and recorded demonstrations, explanations, reenactments, and illustrations of Biblical history and Biblical worship; and
- is used to exhibit times, places, and events of Biblical history and significance.

This bill has an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates section 196.1987, F.S., to specifically provide a property tax exemption for property owned by an entity exempt under 501(c)(3) and used for biblical history displays.

Section 2. Provides that the bill shall take effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

Because this bill clarifies present law, it has no impact on local government revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 7183

2006

1 A bill to be entitled
2 An act relating to property tax exemptions; creating s.
3 196.1987, F.S.; exempting from ad valorem taxation certain
4 property owned by an organization exempt from federal
5 income taxes and used to display aspects of Biblical
6 history; providing limitations; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Section 196.1987, Florida Statutes, is created
12 to read:

13 196.1987 Biblical history display property exemption.--The
14 use of property owned by an organization exempt from federal
15 income tax under s. 501(c)(3) of the Internal Revenue Code to
16 exhibit, illustrate, and interpret Biblical manuscripts,
17 codices, stone tablets, and other Biblical archives; provide
18 live and recorded demonstrations, explanations, reenactments,
19 and illustrations of Biblical history and Biblical worship; and
20 exhibit times, places, and events of Biblical history and
21 significance, when such activity is open to the public and is
22 available to the public for no admission charge at least 1 day
23 each calendar year, subject to capacity limits, and when such
24 organization has received written correspondence from the
25 Internal Revenue Service stating that the conduct of the
26 organization's activities does not adversely affect the
27 organization's exempt status under s. 501(c)(3) of the Internal
28 Revenue Code, constitutes religious use of such property, which

HB 7183

2006

29 is hereby defined as property within the purview of s. 3(a),
30 Art. VII of the State Constitution and is exempt from ad valorem
31 taxation to the extent of such use pursuant to s. 196.192(2).
32 Any portion of such property used for nonexempt purposes may be
33 valued and placed upon the tax rolls separately from any portion
34 entitled to exemption pursuant to this section.

35 Section 2. This act shall take effect July 1, 2006.